



News & Types: Client Advisories

H-1B Program Updates Heading Into the New Year

12/30/2025

By: Julie T. Emerick, Anne C. Miller

Practices: Immigration

The Masuda Funai Immigration Group provides this Client Alert to update employers about changes to the H-1B program which may impact them in 2026. This Alert focuses on changes to next year's H-1B Quota Lottery Selection Process and the status of court challenges to the \$100,000 H-1B Fee for certain H-1B beneficiaries. Additional updates about the implementation of more changes to the H-1B (and other immigration) programs will be provided in 2026 through the Masuda Funai Business Immigration Monthly Updates and special Client Alerts and through the Masuda Funai LinkedIn page.

CHANGES TO THE H-1B QUOTA REGISTRATION SYSTEM

On December 29, 2025, the Department of Homeland Security (DHS) published a final regulation implementing the "Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions" which goes into effect on February 27, 2026, just in time for the next H-1B Quota Lottery Selection Process ("FY2027 H-1B Lottery"). The FY2027 H-1B Lottery Selection Process should open during the first week of March 2026 and remain open for registration filings for approximately two weeks.

History of the H-1B Lottery.

Over the past twenty years, modifications to the H-1B Lottery have occurred. Initially fully prepared H-1B petitions were mailed in to U.S. Citizenship and Immigration Services (USCIS) starting April 1st and accepted until USCIS reached the allotment of H-1B approvals available.

- FY2005 -- The H-1B quota was met for the first time on the first filing date (Thursday, April 1, 2004). USCIS assigned each petition a number and held a random selection to determine which petitions to process – the creation of the H-1B Lottery.
- FY2008 -- USCIS implemented a rule prohibiting an employer from filing multiple H-1B petitions for the same employee and established a filing period of five business days to receive the fully prepared H-1B petitions. If USCIS received enough H-1B petitions to meet the quota during the initial filing period, a lottery was held. If the quota was not met during the filing period, USCIS continued to accept H-1B petitions until the quota was met. At the expense of USCIS, unselected petitions were mailed back to the petitioner or attorney who filed the petition.

- FY2021 -- USCIS implemented the on-line registration requirement with a \$10.00 fee, eliminating the need for a fully prepared H-1B petition to be submitted. USCIS would accept electronic registrations during a stated filing period. Via the on-line registration, an employer submitted the name of the employee to be considered for the H-1B Lottery. If USCIS received enough H-1B registrations to meet the quota during the initial registration period, a lottery was held. Statistics on H-1B Registrations for the prior five fiscal years are stated below.

Table 3. H-1B Registrations for FY 2020 through FY 2024

Fiscal Year	Number of Registrations (Non-master's + Master's or higher)	Non-master's	Master's or higher	Number of Unique Beneficiaries with Eligible Registrations
2020	274,237	148,142	126,095	118,026
2021	308,613	161,820	146,793	235,435
2022	483,927	334,360	149,567	356,633
2023	780,884	529,530	251,354	450,354
2024	479,953	325,825	154,128	443,108
5-Year Total	2,327,614	1,499,677	827,937	1,603,556
5-Year Average	465,523	299,935	165,587	320,711

Source: USCIS, OPQ, Benefits Hub, queried 3/2025, TRK #17347. Registrations submitted in each fiscal year are for beneficiaries to begin work as an H-1B nonimmigrant the following fiscal year. Cap-subject petitions filed in each fiscal year are generally for beneficiaries to begin work as H-1B nonimmigrants the following fiscal year.

- FY2025 -- USCIS established a “beneficiary-centric” selection process and increased the on-line registration fee from \$10.00 per individual to \$215.00 per individual.
- FY2027 -- The H-1B registration fee remains at \$215.00 per individual but the beneficiary-centric process will be enhanced giving a beneficiary more possibilities for consideration based upon their wage level.

Beginning with Next H-1B Quota Registration Process, the Wage to be Paid signifies the “Best and Brightest” and number of “H-1B Lottery Tickets”.

DHS indicated in its final regulation that it will not be making changes to the process it proposed on September 24, 2025, even though 2,731 comments were received on the proposed regulation. (The Masuda Funai Immigration Group’s review of the proposed regulation is available at Client Alert.)

DHS contends that “best and the brightest” workers, those with the highest skill level, are paid the highest wages by employer and Congress intended the H-1B program to be used for the highest skilled workers. The H-1B program allows for up to 85,000 new H-1B workers each fiscal year, with 20,000 petition approvals reserved for beneficiaries who earned a Master’s or higher degree from an accredited U.S. university (the “U.S. Master’s Cap”).

Statistics on the U.S. Department of Labor’s (DOL) Occupational Employment and Wage Statistics (OEWS) Prevailing Wages Levels stated in H-1B Quota Petitions for the prior five fiscal years are stated below. There are 4 available OEWS prevailing wage levels with Level 1 labeled by DOL as entry level, Level 2 labeled qualified, Level 3 labeled experienced and Level 4 labeled fully competent.

Table 12. Percentage of H-1B Cap-Subject Receipts and Estimated Number of Beneficiaries with Eligible Registrations by Wage Level for 5-Year Average for FY 2020 through FY 2024

5-Year Average	Level I	Level II	Level III	Level IV	Total
Non-master’s	9,254	28,238	6,052	2,834	46,379
Total %	20%	61%	13%	6%	100%
Cumulative %	20%	81%	94%	100%	
Master’s or higher	17,351	24,201	5,171	1,799	48,522
Total %	36%	50%	11%	4%	100%
Cumulative %	36%	86%	96%	100%	
Cap-Subject Total	26,605	52,439	11,223	4,633	94,900
	28%	55%	12%	5%	100%
Estimated Number of Beneficiaries with Eligible Registration by Wage Level	89,911	177,216	37,928	15,657	320,711

Source: USCIS analysis. N/A counts in H-1B cap-subject receipts by wage level were redistributed among wage levels using the percent of total. For example, for wage level II, 28,238 is 26,975, the 5-year average of non-master’s for level II from Table 11, plus 1,264, which is 61 percent of the total N/A count, 2,075. The estimated number of beneficiaries with eligible registrations by wage level is estimated using percentages by wage level (level I, 28%; level II, 55%; level III, 12%; and level IV, 5%) of the 5-year average of the number of beneficiaries with eligible registrations, 320,711. The 5-year annual average of number of beneficiaries with eligible registrations, 320,711, is from Table 3.

How will the Weighted Selection Process work?

As part of the information to be provided in the on-line H-1B Registration, the employer will indicate the wage level to be offered for the position considering the occupation (based upon a Standard Occupation Classification (SOC) and the location of employment.

If USCIS receives more registrations than projected to reach the H-1B quota, which often occurs as noted above, registered beneficiaries will be assigned up to four entries into the H-1B Lottery based upon the lowest wage level noted in their registrations. If the employer selects a Level 1 prevailing wage, the registered beneficiary will be assigned one entry into the H-1B Lottery. If the employer selects a Level 2 prevailing wage, the registered beneficiary will be assigned two entries into the H-1B Lottery. If the employer selects a Level 3 prevailing wage, the registered beneficiary will be assigned three entries into the H-1B Lottery. If the employer selects a Level 4 prevailing wage, the registered beneficiary will be assigned four entries into the H-1B Lottery.

The USCIS has indicated the following probability of being selected in the revised H-1B Lottery based upon the prevailing wage level selected:

	Level I	Level II	Level III	Level IV	Total
(D) Probability of Being Selected to File H-1B Cap-Subject Petitions under New Weighted Selection by Wage Level	15.29%	30.58%	45.87%	61.16%	

During the last FY2026 H-1B Lottery, the USCIS indicated that beneficiaries had about a 27 percent chance of being selected with beneficiaries claiming the U.S. Master's degree or higher degree exception having a slightly greater probability than regular cap beneficiaries.

An employer (or related company) may only register the beneficiary once; but a beneficiary may be registered by multiple employers, including themselves as a "beneficiary owner." Each registration must state the OEWS prevailing wage level offered for the H-1B job. If a beneficiary has multiple registrations submitted by different employers at different wage levels, the lowest prevailing wage level determines the number of lottery entries assigned.

What components of the H-1B Registration remain unchanged?

Employers will continue to register individuals in the H-1B Lottery on-line during a stated filing period, likely beginning during the first week of March 2026.

The H-1B Registration Fee remains at \$215.00 per registration.

The beneficiary-centric component continues from last year whereby when a beneficiary is selected, each employer submitting a registration for the beneficiary is notified of the selection and could file a H-1B petition on their behalf.

USCIS will continue to complete the H-1B Lottery selection of the regular cap (65,000) before selecting the additional 20,000 for the U.S. Master's Cap, affording beneficiaries with a U.S. Master's degree a stronger chance at selection.

How will the Weighted Registration impact a FY2027 H-1B Quota Filing?

If the H-1B Lottery Registration is selected, the employer must file the H-1B petition using SOC; area(s) of intended employment; documentation of the prevailing wage level noted in the registration and offer a wage that meets or exceeds the prevailing wage level stated in the registration.

Once the H-1B petition has been approved, if there is a change in worksite, the employer may need to file an amendment with USCIS to update the worksite locations. If the location of employment changes after the H-1B Lottery registration has been selected and before the filing of the H-1B petition, the employer would need to explain the reason for the change and USCIS will exercise discretion to determine if the change is bona fide. If the wage offered in the new location meets or exceeds the prevailing wage level stated in the H-1B Lottery registration for the new location, USCIS may approve this change.

USCIS acknowledges the right to deny a subsequent new or amended petition by the employer (or a related entity) if it determines the new or amended petition was filed to reduce the proffered wage to a wage lower than indicated in the H-1B Lottery registration or H-1B Cap petition.

USCIS will be modifying the Form I-129 Petition for Nonimmigrant Worker used in the filing of an H-1B petition to address the wage level and SOC information provided in the H-1B registration.

H-1B \$100,000 VISA FEE: LITIGATION UPDATE

As previously discussed in our September 22, 2025 Client Alert, on September 19, 2025, a Presidential Proclamation was issued restricting the entry of certain H-1B nonimmigrant workers into the United States. The Proclamation established a new \$100,000 fee as a condition of admission for certain H-1B beneficiaries. The fee applies to H-1B workers who are outside the United States and seeking initial entry in H-1B status, or reentry following approval of a consular notification petition, where the underlying H-1B petition was filed on or after September 21, 2025.

On December 23, 2025, a U.S. District Court in Washington, D.C. upheld the Administration's authority to impose the \$100,000 fee. The Court concluded that the Immigration and Nationality Act (INA) confers broad discretion on the executive branch to regulate the admission of noncitizens, including the authority to condition entry on the payment of substantial fees. The Court explained:

"The lawfulness of the Proclamation and its implementation rests on a straightforward reading of congressional statutes giving the President broad authority to regulate entry into the United States for immigrants and nonimmigrants alike."

As reported on in our October 2025 Business Immigration Monthly, the Plaintiffs opposing the \$100,000 fee include the U.S. Chamber of Commerce and the Association of American Universities. The Plaintiffs argued that the fee is inconsistent with congressional intent underlying the H-1B program to address demonstrated shortages of skilled workers while protecting U.S. workers. The Plaintiffs also argued that the fee will functionally eliminate access to the H-1B visa for many employers seeking to hire professional workers. This will especially affect small companies and nonprofit institutions for whom the fee may not be feasible.

The Court declined to assess the policy's economic or practical consequences, emphasizing that its role was limited to determining whether the Presidential Proclamation announcing the fee fell within the statutory

authority of the executive branch. The Court noted that courts traditionally afford substantial deference to the executive branch in matters concerning the admission of noncitizens.

The Plaintiffs filed an appeal of the District Court's decision on Monday, December 29th. It is anticipated that this case will ultimately be decided by the U.S. Supreme Court. Bloomberg Intelligence Litigation Analyst Matthew Schettenhelm said in a note after the appeal was filed that the Chamber faces an uphill battle on appeal - "Though the Chamber had a solid judge — Obama-appointee Judge Beryl Howell, who's been tough on the Trump administration — she handed Trump a sweeping victory," he wrote. "If Judge Howell didn't find legal defects in the novel proclamation, we doubt the DC Circuit or US Supreme Court would either." Two other cases challenging the legality of the \$100,000 H-1B fee are also pending in California and Massachusetts.

Follow us on LinkedIn for additional Legal Updates.



Masuda Funai is a full-service law firm with offices in Chicago, Detroit, Los Angeles, and Schaumburg.