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Explainer: H-1B Rule Replaces Random Lottery System with a Weighted Selection Lottery

Introduction

On December 23, 2025, the Department of Homeland Security (DHS) published a final rule to change how U.S. Citizenship and Immigration Services (USCIS) operates the lottery process to select H-1B visa petitions. The new rule will take effect on February 27. Under previous rules, when the number of petitions exceeded the 85,000 available cap (65,000 visas under the regular cap and an additional 20,000 visas under the advanced degree exemption cap), USCIS conducted a random lottery that gave every beneficiary the same chance of being selected. The new final rule will replace that random lottery with a weighted selection process that gives greater odds of selection to higher-wage applicants.

Key Provisions of the Final Rule

Weighting by wage level: Based on the profession, salary, and region of the H-1B applicant, petitions will be assigned a weight based on the Occupational Employment and Wage Statistics (OEWS). A registration at wage level IV will be entered in the lottery pool four times. At wage level III, applicants will be entered in the lottery three times. At wage level II, applicants will be entered two times. And at wage level I applicants will be entered just once.

Within each occupation and region in the country where the job will be performed, the OEWS data set provides four wage levels that correspond roughly to experience and job complexity:

- Level I (entry-level) – Basic understanding and close supervision.
- Level II (qualified) – Moderate experience and judgment.
- Level III (experienced) – Substantial experience and independent work.
- Level IV (fully competent) – Advanced expertise and often supervisory roles.

OEWS wage levels vary significantly based on profession and location, with urban wage levels often exceeding those in suburban and rural areas. A Level IV position is not always a high-paying job in the national income average. Some Level IV wages in certain fields fall below the national median, while some Level II positions rank among the highest-paid in the U.S. economy.

Required SOC disclosures: As explained above, OEWS wage levels vary by both profession and geographic region. Each profession is classified under a Standard Occupational Classification (SOC) code, such as "Software Developers" or "Civil Engineers." Each SOC has its own national and regional wage data, reflecting differences in required skills, education, and market pay. Registrants will need to

indicate on the registration the SOC code, industry of intended employment, and the wage level box corresponding to the offered wage.

How the Final Rule Could Affect Different U.S. Industries

The weighted selection process could significantly change how employers across industries approach the H-1B program. By tying selection odds to the OEWS system, the rule will reward employers that pay higher salaries and potentially disadvantage those offering entry-level or lower-paid specialty positions in areas with a lower cost of living. The effects will likely vary by sector, but it is undeniable that the rule will create significant challenges for the labor market:

Potential for wage inflation: Employers may feel pressure to raise wages primarily to gain lottery advantage, even if it does not reflect local market rates.

Reduced diversity of roles: Because selection odds will favor higher-paying jobs in high-cost of living regions, essential positions with lower wages — such as entry-level and rural positions — could receive fewer visas. This may narrow the range of workers, areas and companies that benefit from the H-1B program over time.

Administrative complexity: Determining and documenting correct OEWS wage levels across multiple worksites could add compliance challenges for employers.

Obstacles for smaller employers: The rule could disadvantage smaller firms and employers that cannot match private-sector salaries.

Undermines international student pipeline: By favoring higher-paid positions, the final rule could disadvantage many high-skilled, entry-level roles typically pursued by recent international graduates. This shift may weaken the international student pipeline, making it more difficult for graduates to begin their careers in the U.S. and discouraging prospective students from choosing U.S. universities.

Exemptions to the H-1B Visa Cap and Lottery System

The rule does not change existing H-1B visa exemptions for institutions of higher education, nonprofit research organizations, and government research organizations. These cap-and-lottery-exempt employers will continue to be exempt from the 85,000 visa cap and the lottery system and be able to file H-1B petitions at any time of year, outside the lottery system.

Conclusion

The H-1B weighted selection rule could represent a major shift in how the U.S. allocates limited visa slots among highly skilled foreign workers. Industries that rely on entry-level or modestly paid skilled workers in rural areas may find it harder to compete, potentially limiting innovation and workforce diversity.