

FY 2027 H-1B Cap Lottery: What Employers Need to Know About the Weighted Lottery and \$100,000 Fee

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With the fiscal year 2027 H-1B cap lottery registration expected to open in **March 2026**, participating employers should start preparing for the registration due to significant changes in the cap H-1B lottery system. The U.S. Citizenship and Immigration Services (USCIS) has implemented a new weighted, wage-based selection process, effective February 27, 2026. Under this system, the number of lottery entries a registration receives will correspond to the offered salary relative to the Department of Labor's four-level wage scale: Level 1 (entry-level) = 1 entry, Level 2 (some experience) = 2 entries, Level 3 (mid-level) = 3 entries, and Level 4 (highly experienced) = 4 entries. Positions with higher wages will have a better chance of being selected, while entry-level roles or positions offered lower wages will face reduced odds. For employees with multiple worksites or if multiple employers submit registrations for the same beneficiary, the **lowest applicable wage level controls** the number of entries, so careful planning and accurate wage-level reporting are critical. Employers must also provide the correct occupational classification and geographic area of intended employment at the time of registration, as USCIS may review this information post-selection and could deny petitions if registrations were incorrectly represented.

In addition to the weighted lottery, a new \$100,000 H-1B fee applies to certain petitions filed for beneficiaries **outside the United States who do not hold a valid visa, or if the petition requests consular notification, port of entry notification, or pre-flight inspection for an alien in the United States**. This fee does not apply to cap H-1B petitions filed and approved for a change-of-status (i.e. from F-1 OPT to H-1B). It is important for employers and employees to understand that a denial of change of status request or a departure from the U.S. while the petition is pending or a status violation, would make the petition subject to the \$100,000 fee. Some beneficiaries may qualify for a **National Interest Exception (NIE)**, though approval is discretionary, may take time, and cannot be guaranteed. Employers should consider the financial and strategic impact of this fee when deciding which foreign nationals to sponsor. The fee has survived initial legal challenges but remains the subject of ongoing litigation.

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Employers should also be mindful of additional considerations, including USCIS policies regarding foreign nationals from **travel-ban countries**, which could place petitions on “adjudicative hold,” delaying final adjudication. Entry-level roles may face disadvantages under the new weighted lottery system, which could impact startups and smaller employers disproportionately. Employers should also explore **alternative visa pathways**—such as O-1, TN, E-3, or H-1B1—especially for candidates who may face reduced odds under the new system.

Action Steps for Employers:

- **Identify potential H-1B candidates:** Review F-1 OPT/STEM OPT students, H-4 or L-2 work-authorized employees, TN/E/H-1B1 employees, and employees nearing maximum time limits in other visa categories.
- **Assess positions and salaries:** Determine the correct DOL wage level for each position, including multiple worksites, to accurately calculate lottery entries.
- **Document post-registration changes:** Monitor salary, promotion, or worksite changes after registration and maintain documentation to ensure compliance with weighted lottery rules.
- **Evaluate fee exposure:** Determine if the \$100,000 fee applies and whether an NIE request is appropriate, particularly for employees abroad or outside change-of-status eligibility.
- **Consider contingency planning:** Develop alternative sponsorship strategies for entry-level candidates or employees who may face reduced lottery odds, including alternate visa categories or temporary staffing options.

Early planning is critical to maximize the likelihood of H-1B lottery selection and minimize financial and compliance risk. **Please contact Dorsey & Whitney LLP’s immigration team** for guidance if you are considering sponsoring foreign nationals in fiscal year 2027, have questions about wage-level determinations, the \$100,000 fee, or alternative visa strategies, or need assistance navigating post-registration requirements. Proactive legal guidance can help ensure compliance, optimize lottery strategy, and protect your workforce planning objectives.