



Significant Changes to the H-1B Cap Program: Key Considerations for Employers and Applicants

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Key Takeaways

- A new **\$100,000 supplemental fee** applies to all new H-1B petitions filed on or after September 21, 2025.
- DHS has proposed a **weighted lottery system** favoring higher prevailing wage levels.
- The Department of Labor is expected to **raise prevailing wage levels**, increasing required minimum salaries.
- **Project Firewall** signals stricter enforcement, with more audits and investigations.
- Employers should prepare for **higher costs, greater compliance obligations, and narrower sponsorship strategies**.

The H-1B visa program is entering a period of substantial change. Recent executive action, coupled with proposed regulatory revisions, will affect both the cost and the process of sponsorship. Employers and foreign nationals should prepare for a more restrictive and closely monitored framework. In such an environment, experienced legal counsel is more critical than ever.

We at GYH can help navigate the uncertainty, identify creative alternatives, and facilitate strategic planning to provide the best path forward.

Below is an overview of what could be the most consequential developments affecting the FY2027 H-1B Cap Lottery (which will take place in March 2026).

Supplemental Fee of \$100K for New Petitions

The Presidential Proclamation issued September 19, 2025 indicates that as of September 21, 2025, new H-1B petitions filed on behalf of an individual outside the U.S. must include a \$100,000 supplemental payment. This requirement appears to affect those who have an H-1B cap registration selected in the upcoming lottery, since the Proclamation applies exclusively to new petitions filed on or after the effective date.

At this time, government agencies have not yet established a way to pay the \$100,000 fee, so the logistics remain unclear. Furthermore, many anticipate litigation that will challenge



whether the proclamation is lawful. If such litigation is unsuccessful, this unprecedented increase in cost will significantly alter the sponsorship calculus for many employers. And even if the litigation is successful at a lower-level court, the possibility exists that a higher court will see things differently and reinstate the fee, with unknown consequences for employers who file petitions in the interim.

Proposed Weighted Lottery Based on Wage Levels

In addition to the proclamation from the White House, the Department of Homeland Security has proposed a shift from the existing randomized H-1B lottery to a weighted selection process. Under this framework, when there are more H-1B registrations than available H-1B numbers, registrations would be entered into a lottery, as in the past, but the number of entries assigned to a given registration would correspond to the prevailing wage level of the offered position:

- **Level I (entry-level):** one entry
- **Level II:** two entries
- **Level III:** three entries
- **Level IV (highest wage level):** four entries

This proposal is intended to prioritize higher-wage (and ostensibly higher-skill) positions, thereby reducing the likelihood of selection for lower-wage roles.

For a recent graduate, who is typically offered an entry-level (Level 1) wage, their chances of being selected will plummet compared to a more experienced, higher-paid professional in the same occupational classification. This shift effectively favors senior talent over new graduates, making it substantially harder for international students who have just completed their degrees in the U.S. to secure a path to long-term employment. Worth noting, the proposed framework would favor a professional earning a level II wage in an occupation that requires a bachelor's degree over someone earning a level I wage in an occupation that requires a doctorate degree or M.D., so the "higher wage equals higher skill" framework has some in-built flaws.

While the new \$100,000 fee for new H-1B petitions may not apply to those who can change their status from within the U.S. and don't need to leave the country, the wage-based lottery system directly undercuts the primary visa path for F-1 students who have recently graduated and wish to seek employment in the United States. This change may force F-1 students to reconsider their study and career plans in the U.S. and explore opportunities in other countries with more accessible immigration systems, leading to a "brain drain" of talent that the U.S. has invested in educating.



As with the presidential proclamation discussed above, there is a reasonable likelihood that this new policy, once finalized, will be litigated by individuals and groups seeking to prevent it from going into effect. Because the final rule will not take effect for several months, there may be only a short period between its effective date and the opening of the H-1B registration window.

Our team can assist in preparing clients for two different universes: one where the rule goes into effect and one where it does not, helping businesses mitigate disruption with strategic planning.

Revisions to Prevailing Wage Levels

The Department of Labor has also been directed to revise the prevailing wages upward. Employers may therefore face higher minimum salary requirements for H-1B petitions, potentially further limiting eligibility for certain entry-level or lower-compensation roles.

GYH can assist with evaluating compensation structures for compliance, exploring alternative visa classifications without prevailing wage requirements, and strategizing for roles where higher wages may not be viable.

Enhanced Enforcement: “Project Firewall”

The Department of Labor has announced **Project Firewall**, a new enforcement initiative that emphasizes stricter oversight of H-1B employer compliance.

Our team can work with employers to prepare for:

- More frequent audits and investigations.
- Greater scrutiny of wage documentation and labor condition applications.
- More robust certification of penalties for violations.

This development reflects a shift toward not only restructuring the H-1B program but also intensifying enforcement of existing obligations.

Practical Implications of Recent H-1B Changes

- **Increased Financial Burden:** The \$100,000 supplemental fee together with policies that incentivize higher wages and increase prevailing wage calculations would significantly elevate the cost of sponsorship, making this category less attractive particularly for smaller businesses and start-ups.



- **Strategic Sponsorship Decisions:** Employers may choose to reserve H-1B sponsorship for senior or specialized roles that justify higher wages and better lottery prospects.
- **Compliance Obligations:** Heightened enforcement demands careful attention to documentation and strict adherence to all regulatory requirements.
- **Uncertainty for Applicants:** Prospective H-1B beneficiaries may face reduced selection probabilities, especially in lower-wage categories within any given occupation.

Next Steps

The supplemental fee requirement is already in effect for certain H-1B petitions filed on or after September 21, 2025 (although the administering agencies have not yet produced a mechanism to allow the fee to be paid). The weighted lottery and revised prevailing wage levels are subject to the regulatory process and may not be finalized until shortly before or after the upcoming H-1B cap season begins. Legal challenges and implementation delays remain possible.

Because these changes are layered with uncertainty, employers should not wait until the H-1B registration window opens to act. GYH can help your business evaluate financial and compliance risks, identify creative alternatives to the H-1B program, and develop contingency plans for variable regulatory and policy outcomes.

Ultimately, the H-1B program is undergoing a fundamental realignment that favors higher-wage roles while significantly increasing the cost of sponsorship. Employers that engage legal counsel early will be best positioned to navigate the shifting landscape, control risk, and develop creative solutions that keep long-term workforce strategies on track. Our team at GYH is uniquely positioned to guide you through these challenges, and we welcome you to get in touch to discuss the strategies that will make the most sense for your organization.