THE DEPARTMENT OF HOMELAND SECURITY PROPOSES SIGNIFICANT CHANGES TO ALLOCATION OF H-1B VISAS—PUBLIC COMMENT OPPORTUNITY

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US Immigration Alert

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Continuing with the rapidly evolving immigration landscape in the United States,[1] the Department of Homeland Security (DHS) will publish a proposed rule in the Federal Register on 24 September 2025 seeking to overhaul the US Citizenship and Immigration Services (USCIS) selection process for registrations for H-1B cap subject petitions (Proposed Rule). The Proposed Rule outlines a transition away from a random selection process to a weighted system that favors positions with a higher prevailing wage level, as opposed to a higher salary.

Under the Proposed Rule, each H-1B registration would be assigned a number of entries into the H-1B selection pool based on Department of Labor Occupational Employment and Wage Statistics (OEWS) wage levels, with a Level IV receiving four entries and Level I one entry. For reference, OEWS wage levels correspond to the relevant experience and requirements for a particular occupation, such that Level I normally applies to entry-level roles and Level IV to senior-level positions. While each beneficiary would still only be selected once, the odds of selection would heavily favor more advanced roles. As only the OEWS wage levels would be a factor under the Proposed Rule, the actual wage paid would not be considered by USCIS. The Proposed Rule would apply to both the regular H-1B cap (US$65,000) and the advanced degree exemption (US$20,000).[2]

The changes to the H-1B system under the Proposed Rule likely will affect chances of selection of entry-level foreign workers and recent F-1 graduates because their positions usually correspond to Level I or II wage levels. Further, the Proposed Rule may disadvantage employers filling legitimate entry-level specialty roles and limits opportunities for recent graduates, particularly those from US universities on OPT/STEM OPT.[3]

DHS is accepting public comments through 24 October 2025.We encourage employers who may be affected by the Proposed Rule to participate in the notice and comment process. You may review the Proposed Rule and submit comments here.

As this is a rapidly evolving legal landscape, employers should monitor additional developments over the coming days and weeks. As always, our Immigration Practice Group can assist with all aspects of preparing for and maintaining compliance under the proposed regulations.

FOOTNOTES

[1] *See* K&L Gates Legal Alert, President Trump Issues Proclamation Restricting Entry of Certain H-1B Workers

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and an Executive Order Creating the Gold Card Program (September 23, 2025), https://www.klgates.com/President-Trump-Issues-Proclamation-Restricting-Entry-of-H-1B-Workers-and-an-Executive-Order-Creating-the-Gold-Card-Program-9-23-2025

[2] Institutions of higher education and research-based organizations are exempt from the H-1B cap.

[3] *See* https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/optional-practical-training-opt-for-f-1-students.

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