



Biden Administration Reshapes H-1B Visa Rules: What Employers Need to Know

Insights

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Federal immigration authorities issued a new final rule yesterday that reshapes the eligibility criteria for the H-1B visa program, clarifying which foreign workers can apply for the coveted slots and expanding the reach of the program to cover more workers. The new rule is expected to take effect right before the Trump administration takes the reins at the White House. What do employers need to know about the new H-1B rule issued by U.S. Citizenship and Immigration Services (USCIS) and what steps can you take to benefit from the new direction?

Quick Background

The H-1B visa program allows employers to temporarily hire foreign workers in specialty occupations that require specialized knowledge and at least a bachelor's degree or its equivalent. The visas are valid for up to six years, subject to employer sponsorship and regulatory requirements. They are highly sought after in tech, healthcare, higher education, finance, and engineering.

The Department of Homeland Security (DHS) can award 65,000 H-1B visas per year – but offers another 20,000 slots for foreign workers with U.S. advanced degrees. Employers across the country submit far more H-1B petitions than are available under this cap, which leads to a lottery system for selection for those foreign workers who do not already have H-1B status.

7 Biggest Changes Under New Rules

These changes have been in the works since 2023 when [USCIS issued a proposed rule laying out the H-1B revisions](#). The aim was to tighten the annual lottery system, reduce fraudulent duplicate filings, and address issues that have been a source of frustration for employers and employees alike. Earlier this year, the agency finalized portions of those proposed regulations intended to [reduce the potential for fraud in the H-1B registration process](#), which resulted in fewer fraudulent filings and a [second-round lottery selection](#). Yesterday's finalized announcement includes the following seven additional changes:

- **Easier Extensions:** The new rules cement the “prior deference” policy used to determine whether previously approved H-1B visas should be extended. This will be welcome news for

employers, as the first Trump administration dropped this policy and caused slowdowns by issuing Requests for Evidence and denials for H-1B extensions.

- **Revising the Definition of Specialty Occupation:** The new rules clarify that an employer may accept a range of qualifying degree fields for the H-1B position, but that the fields must logically connect to the duties of the position. A general degree, without further specialization, is insufficient.
- **Expanded Eligibility to Gain Exemptions:** Many nonprofits and government research organizations are exempt from the cap and are able to submit requests for such visas at any time during the year. Under the new rule, it will be easier for organizations to fit into the exempt categories. They will receive preferential treatment if their “fundamental activity” is research, rather than the previous definition which only considered them exempt if they were “primarily engaged” in such research or if their “primary mission” involved research. Moreover, certain H-1B beneficiaries may qualify for H-1B cap exemption when they are not directly employed by a qualifying organization but still spend at least half of their time providing essential work that supports or advances a fundamental purpose, mission, objective, or function of the qualifying organization.
- **Student Visa Expansion:** Foreign nationals transitioning from student visas to H-1Bs will now be able to extend their F-1 student status and any underlying grant of employment authorization until April 1 of the relevant fiscal year for which H-1B status is being requested, which will be welcome news to employers aiming to streamline the process and prevent employment gaps.
- **Business Owners’ H-1B eligibility.** H-1B beneficiaries who are owners of a petitioning entity are eligible for H-1B status, subject to the beneficiary owning a controlling interest in the petitioning employer.
- **Focus on Program Integrity.** Employers will be required to establish that they have a bona fide position in a specialty occupation available for the foreign national as of the requested start date. Additionally, USCIS is cementing its ability to request contracts or similar evidence to determine if the position is bona fide.
- **Stricter Workplace Scrutiny:** The new system will not come without workplace oversight. The new rule grants USCIS expanded power to conduct workplace site visits to ensure the H-1B visas are being implemented correctly and not being abused. Third-party placements will receive greater scrutiny as it is the requirements of the third party, not the petitioner, that are most relevant when determining whether the position is a specialty occupation. Refusal to comply with site visits may result in denial or revocation of the H-1B petition.

The final rule will take effect on January 17, 2025. According to the USCIS, “these provisions mainly amend the regulations governing H-1B specialty occupation workers, although some of the provisions narrowly impact other nonimmigrant classifications, including: H-2, H-3, F-1, L-1, O, P, Q-1, R-1, E-3, and TN.”

How Will the Incoming Administration Impact the H-1B Program?

These latest H-1B program changes will take effect just days before Inauguration Day and are likely meant to counterbalance expected actions from the Trump administration. Immigration reform was a centerpiece of the first Trump administration and had a major impact on foreign nationals and U.S. employers, and we expect more of the same during round two. The Trump administration will likely curtail the reliance on highly skilled foreign workers, throwing roadblocks up for employers who rely on the H-1B visa program.

Will the Trump administration challenge the Biden administration's eleventh-hour rule? [The Congressional Review Act \(CRA\)](#) offers a quick way for a new president, with the consent of Congress, to undo certain regulatory actions implemented by the previous administration. Using the procedures outlined in the law, Congress may enter a joint resolution of disapproval to repeal a final rule. If the President concurs, then the agency is also prohibited from issuing a substantially similar rule in the future – unless, of course, Congress reverses course and later gives authorization. The CRA was used to overturn 16 rules in 2017-2018 during President Trump's first term.

Check out our prior coverage to learn more about how the Trump administration's expected [immigration reform will tighten foreign workforce use](#) and how to [prepare for heightened immigration enforcement under the incoming border czar](#). For additional predictions on immigration and other issues impacting employers, flip through [FP's Workplace Law Forecast 2025](#).

What Should Employers Do?

- **Train HR and Immigration Program Specialists:** You should train your team on how to prepare for and respond to site visit by USCIS's Fraud Detection and National Security unit.
- **Review Agreements with Third-Party Placement Agencies:** Employers can no longer take a hands-off approach to ensuring that H-1B workers placed by an agency at their worksite are performing work that qualifies as a specialty occupation.
- **Review Current Job Descriptions and Requirements:** You should review existing job descriptions for those positions occupied by workers on H-1B visas. You need to ensure they reflect the actual requirements of the position and that a degree in a related field is required for the position.
- **Consult with Legal Counsel for Cap-Exempt Eligibility:** If your organization supports nonprofit or governmental research, consult with your Fisher Phillips immigration attorney to assess your eligibility for cap-exempt H-1B filings. Being cap-exempt will allow you to bypass the annual cap lottery and make it easier to secure visas.
- **Develop a Strategy for the Upcoming H-1B Cap Season:** Work with your immigration counsel to determine which positions and which foreign nationals will qualify for the H-1B lottery.

Conclusion

We will continue to monitor developments and provide updates as necessary. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have any questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Immigration Practice Group](#).

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