

GUIDING THROUGH CHANGE

Understanding Policy Shifts in the Trump Administration



UNDERSTANDING
POLICY SHIFTS
IN THE TRUMP
ADMINISTRATION

K&L GATES

ACC Annual Symposium

Update on Trade and US Immigration Policy and Legislation

March 5, 2026



Agenda



Tariff Update



Tariff and Trade Policy Goals and Rationale



Next Steps and Mitigation Strategy



Q & A



U.S. Trade Policy Goals

“We’re resetting the table.”

– President Trump, April 10, 2025

1. Rework the global trading system to eliminate persistent U.S. trade deficits and
2. Build a coalition as a bulwark to China’s overcapacity, subsidies and mercantilist practices.

The Supreme Court’s Ruling in *Learning Resources v. Trump* has not changed these goals

There's nothing wrong with America's Foreign Defense Policy that a little backbone can't cure.

An open letter from Donald J. Trump on why America should stop paying to defend countries that can afford to defend themselves.

DONALD JOHN TRUMP

To The American People:

For decades, Japan and other nations have been taking advantage of the United States.

The saga continues unabated as we defend the Persian Gulf, an area of only marginal significance to the United States for its oil supplies, but one upon which Japan and others are almost totally dependent. Why are these nations not paying the United States for the human lives and billions of dollars we are losing to protect their interests? Saudi Arabia, a country whose very existence is in the hands of the United States, last week refused to allow us to use their mine sweepers (which are, sadly, far more advanced than ours) to police the Gulf. The world is laughing at America's politicians as we protect ships we don't own, carrying oil we don't need, destined for allies who won't help.

Over the years, the Japanese, unimpeded by the huge costs of defending themselves (as long as the United States will do it for free), have built a strong and vibrant economy with unprecedented surpluses. They have brilliantly managed to maintain a weak yen against a strong dollar. This, coupled with our monumental spending for their, and others, defense, has moved Japan to the forefront of world economies.

Now that the tides are turning and the yen is becoming strong against the dollar, the Japanese are openly complaining and, in typical fashion, our politicians are reacting to these unjustified complaints.

It's time for us to end our vast deficits by making Japan, and others who can afford it, pay. Our world protection is worth hundreds of billions of dollars to these countries, and their stake in their protection is far greater than ours.

Make Japan, Saudi Arabia, and others pay for the protection we extend as allies. Let's help our farmers, our sick, our homeless by taking from some of the greatest profit machines ever created — machines created and nurtured by us. "Tax" these wealthy nations, not America. End our huge deficits, reduce our taxes, and let America's economy grow unencumbered by the cost of defending those who can easily afford to pay us for the defense of their freedom. Let's not let our great country be laughed at anymore.

Sincerely,


Donald J. Trump

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Key Trump Advisors on China Policy

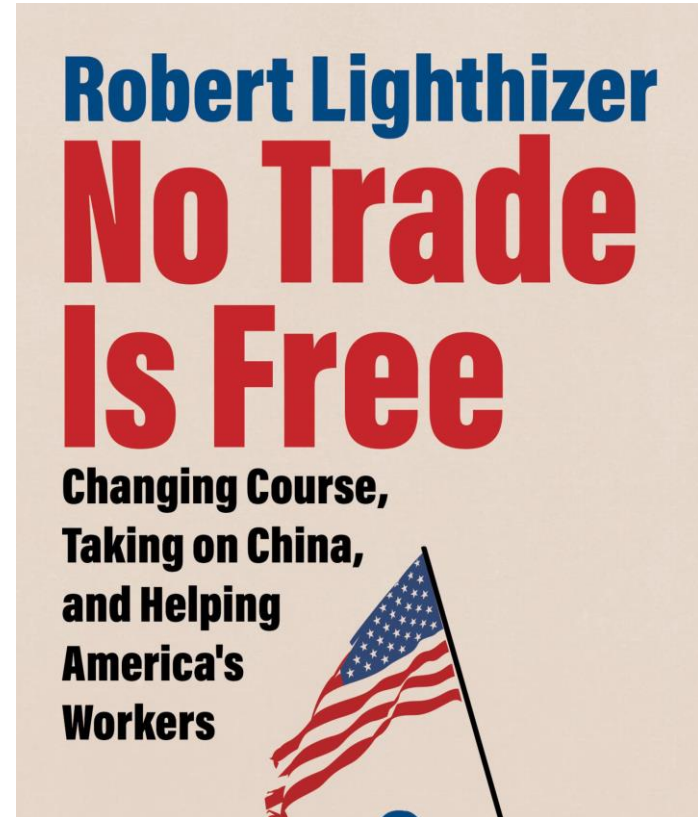


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Amb. Jamieson Greer,
USTR

“I view China’s stated ambitions and observed actions as a **generational challenge for the United States**. Trade and investment with China not only have failed to live up to expectations, but they have also actively harmed U.S. economic and national security interests. **China itself has focused on decoupling for many years, importing from the United States only what it really needs and seeking to dominate its domestic and international markets, particularly in strategic sectors.** Indeed, China repeatedly has implemented its “playbook” of excluding foreign companies from their domestic market, creating overcapacity, and flooding global markets with its goods.”



The basis for the *America First Trade Policy* is explained in detail in this 2023 book by Trump’s former USTR

Key Trump Advisors on China Policy (continued)



“The Biden administration kept on all of the Trump tariffs [on China], but what they did not do in the agreement with China, was enforce the purchase provisions.

So, if confirmed, I would begin pushing for the purchase guarantees that were in the China agreement to be enforced and perhaps push the Chinese for a catch-up provision over the past four years.”

“I believe that the Chinese economy is the most unbalanced economy in the history of the world. They're using their surpluses to fund their military machine. In China, there is a phrase that is two words, military industrial, and military always comes first.

So, we should understand that and that we should have a very rigorous screening process for outbound U.S. investment in anything that could be used [against us by China] . . . and we must make sure that we maintain it through smart policies.”

Scott Bessent, Treasury Secretary

Key Trump Advisors on China Policy



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*Marco Rubio,
Secretary of State*

“The Communist Party of China that leads the PRC, is **the most potent and dangerous near peer adversary this nation has ever confronted**. . . . It’s an extraordinary challenge -- it’s one that I believe will define the 21st Century. . . .”

“We have to rebuild our domestic industrial capacity, and we have to make sure that the United States is not reliant on any single other nation for any of our critical supply chains.

US export controls on China, especially on energy, have “to be on the table, as a number of other measures that we have leverage, as we engage the Chinese in this geopolitical perspective.”



*Howard Lutnick,
Commerce Secretary*

“[China] has stolen things, they broke in, they’ve taken our [intellectual property]. It’s got to end, and I’m going to be rigorous in our pursuit of restrictions and enforcing those restrictions to keep us in the lead because we must stay in the lead.”

“I think they [China] only care about themselves and seek to harm us. And so we need to protect ourselves. We need to drive our innovation and we need to stop helping them. You know, open platforms — Meta’s open platform let DeepSeek rely on it. Nvidia’s chips, which they bought tons of, and they found their ways around, drive their DeepSeek model. It’s got to end. If they are going to compete with us, let them compete, but stop using our tools to compete with us.”

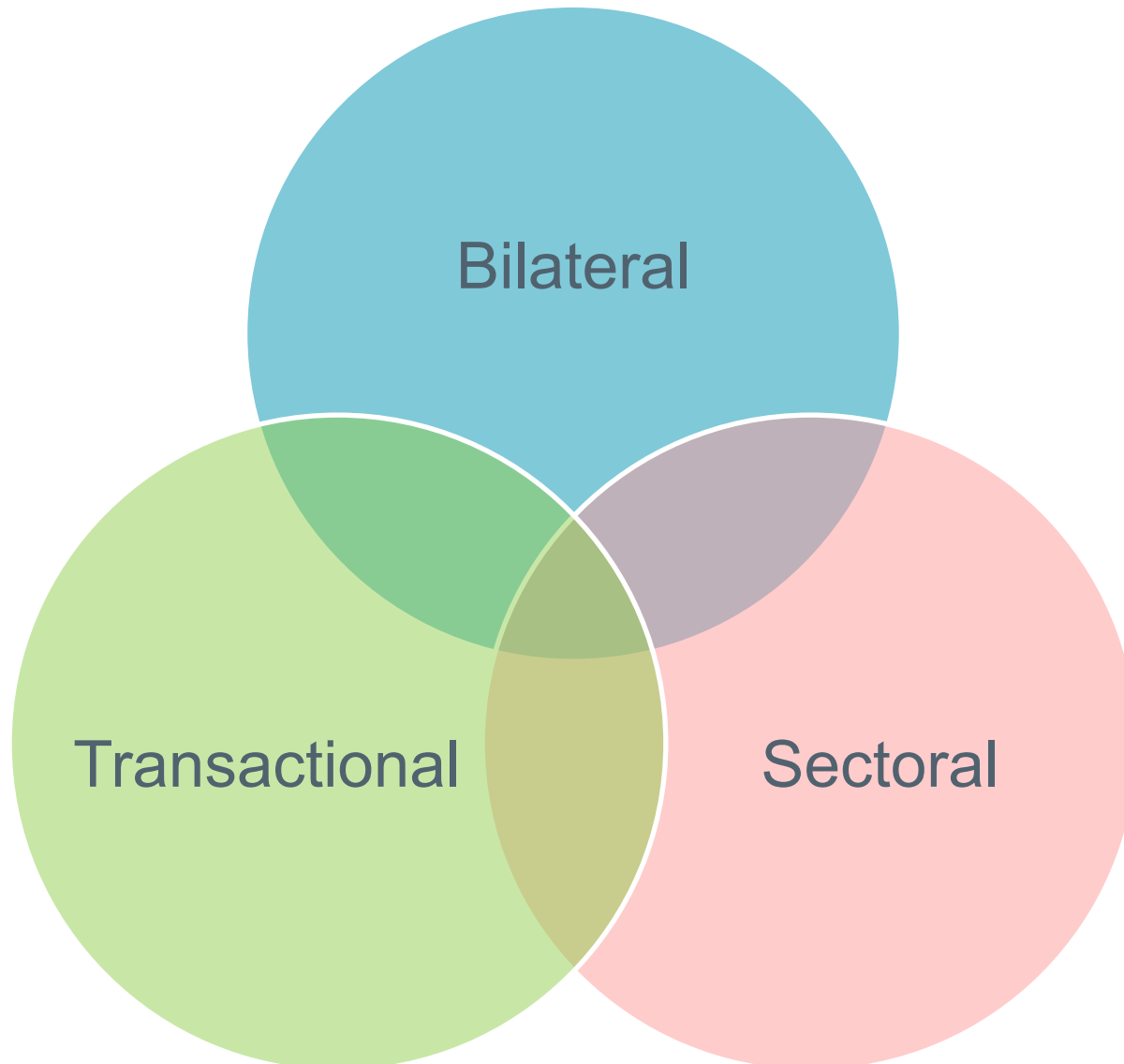
Key Provisions of the *America First Trade Policy*

Pressure countries with which the US runs persistent merchandise trade deficits to reduce same	Establish an External Revenue Service	Use existing statutory authority to remedy unfair trade practices	Review USMCA (to begin by Oct. 2025)	Review and rebalance exchange rates
Review existing trade agreements to enhance US benefits	Negotiate new bilateral trade agreements	End “zeroing” and strengthen AD/CVD laws	Modify or eliminate “de minimis” exemption for imports <\$800	Address discriminatory foreign tax laws
Rebalance competition for US government procurement and distortions of same by foreign subsidies	Examine and adjust Section 301 tariffs and “Phase One” agreement with China	Investigate other unfair trade practices of China under Section 301	Assess China PNTR status and legislation to end same	Consider revoking Chinese patents, copyrights, and TMs
Consider new Section 232 cases and evaluate 232 exclusions	Strengthen US export controls and eliminate loopholes	Consider new restrictions on ICTS from China	Consider expansion of CFIUS restrictions on US investment in China	Assess use of trade measures to reduce flow of illegal drugs and illegal immigration

 = China-related
 = Being implemented already
 ● = Requires new legislation



Features of the *America First Trade Policy*



Current Section 232 Tariffs / Investigations

Steel +
derivatives

Aluminum +
derivatives

Autos/light trucks
+ parts +
derivatives

Heavy trucks +
parts +
derivatives

Copper
(semifinished) +
derivatives

Critical minerals +
derivatives

Lumber/furniture
+ derivatives

Robots and
Machinery

Pharmaceuticals /
Pharmaceutical
Ingredients

Medical
equipment,
consumables,
PPE

Semiconductors,
SME +
derivatives

Commercial
aircraft and jet
engines

Polysilicon +
derivatives

UAS +
parts/components

Wind Turbines

the Main Imports of the U.S.

Import value of the top U.S. goods imports in 2024

Pharmaceutical preparations \$246.8B

Passenger cars \$213.6B

Automotive parts and accessories \$196.7B

Crude oil \$167.3B

Computers \$116.7B

Cell phones and other household goods \$111.9B

Electrical apparatus \$102.7B

Computer accessories \$100.7B

Other industrial machinery \$84.9B

Telecommunications equipment \$84.6B

Subject to Section 232 trade actions



Total goods imports: **\$3.27 trillion**

Sectoral – Fees Re: Chinese-built ships



Implemented under Section 301 authority



Started October 14, 2025, increase over next 20 years



Apply to vessels calling at U.S. ports where the fleet owner/operator uses China-built ships



Proposed tariffs on containers, chassis, other “instruments of international traffic”, cranes, etc.



Fees based on type of ship, cargo volume, tonnage



Various exemptions for voyages <2,000 miles, U.S. owned vessels, etc.

What happens next



- 10% Section 122 tariffs in place through July 24, 2026, may increase to 15% for some countries
- Existing Section 301 tariffs on imports from China will be adjusted in scope and tariff rate
- New Section 301 tariffs will be imposed in one or more investigations that will take 90-120 days to complete
- Changes will be made to Section 232 tariffs, including application of Section 232 tariffs to “derivative articles”
- U.S. trade negotiations with Canada, Mexico, China, and others will continue
- Refund process for IEEPA tariffs will take months or years to complete and will expose companies to risks of lawsuits from their customers

Importance of Immigration Compliance



Overview: Importance of Immigration Compliance

- Increasing and aggressive enforcement focus on employers
- Two common pressure points:
 - Business visitors (B-1/ESTA)
 - Independent contractors and misclassification
- Compliance protects both employers and employees
- Compliance now helps mitigate fallout from potential enforcement actions in the future

New Enforcement Landscape



Be Prepared for Worksite Enforcement

- Develop and maintain internal worksite enforcement protocols now:
 - Designating worksite coordinators
 - Complying with recordkeeping procedures
 - Understanding scope and nature of enforcement operations
 - Understanding employees' rights
- Ensure appropriate training and preparation in the event of worksite enforcement:
 - Cooperate, but verify
 - Document scope, activity, and seizure
- Develop an action plan for post-enforcement response

Potential Liabilities



Serious Legal & Reputational Harms

- Civil Exposure
 - Unlawful to knowingly hire or refer unauthorized workers
 - \$3,000 fine per unauthorized worker (pattern & practice violations (8 USC §1324a(a)(1); 8 CFR § 270.3(b))
- Criminal Exposure
 - Unlawful to knowingly employ, recruit, or facilitate employment of unauthorized workers
 - Corporate felony liability; criminal forfeiture; maximum six months' prison; fines
 - Potential RICO exposure for “bringing in,” “harboring,” “transporting,” or “encouraging or inducing” illegal workers if done for “financial gain” (8 USC § 1324)
 - Example: >\$95MM in criminal and civil fines in recent corporate resolution
- Reputational & Business Impacts

Business Visitors



Overview

- **B-1 vs ESTA:** similar, but not the same
- Entry to US is more simplified
 - Quick ways to get employees into the US for short-term business needs
 - Most common areas of risk
- Nonimmigrant Visas - ICE and CBP are watching closely
 - Common misuse: Out of scope activities can create exposure
- Key challenges:
 - Limited scope of activities
 - Short duration
 - Runway and administrative burden of obtaining work visa
 - Scrutiny: POE / Interview / Presence during workplace visits

INA 101(a)(15)(B):



An alien ... having a residence in a foreign country which he or she has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure





Who is a Business Visitor?

Elements:

Foreign national

Entering the US temporarily

Legitimate business activities that do not involve US employment or productive labor

Has a foreign residence with no intention of abandoning it

Compensated from non-US source



Business ≠ Work

Permitted activities:

- Attending meetings or conferences.
- Negotiating contracts.
- Receiving training or participating in short-term planning.
- Touring facilities or visiting sites.

Prohibited activities:

- Hands-on project work.
- Supervising US employees.
- Delivering services to a US client.
- Being paid from a US payroll (beyond incidental expenses).



Example:

Project Manager

A multinational tech company sent project managers to the US on ESTA for quarterly business reviews.

Manager starts running weekly project meetings and assigning tasks.

Issue: Hands-on work. Unauthorized employment

9 FAM 402.2-5(E)(1):



An applicant coming to the United States to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the United States or to train U.S. workers to perform such services.



Independent Contractors



Independent Contractors

- Independent contractors (ICs) are not “employees” for I-9 purposes
- This general rule leads to several misconceptions which have significant consequences
- Calling someone an IC does not make it so
 - Department of Homeland Security (DHS) uses common law definition to determine whether someone is truly an IC
- Unlawful to knowingly contract with an IC who is not authorized to work in the US
 - Cannot deem someone an IC to avoid obtaining a work visa
 - Cannot fire unauthorized workers and rehire as IC



Independent Contractors

- Even valid ICs are subject to immigration laws
- ICs entering under ESTA/B-1 cannot perform employment activity
- ICs cannot receive pay or compensation from a US source, other than expense reimbursement
- ICs must prove the primary source of profit from the activity is the home country (not the US)
- Limited exception for equipment installation/service if explicitly part of sales contract between US customer and foreign provider

Candidate Screening



DOJ Screening Questions

Immigrant Employee Rights Section (IER) permissible screening questions to prevent discrimination based on citizenship or national origin:

- ***Are you legally authorized to work in the United States? (Yes/No)***
- ***Will you now or in the future require sponsorship for employment visa status (e.g., H-1B visa status)? (Yes/No)***

Questions should be asked of all candidates without targeting individuals based on accent, appearance, or name.

Avoid Detailed Questions: Specific visa types, immigration status, or documentation.

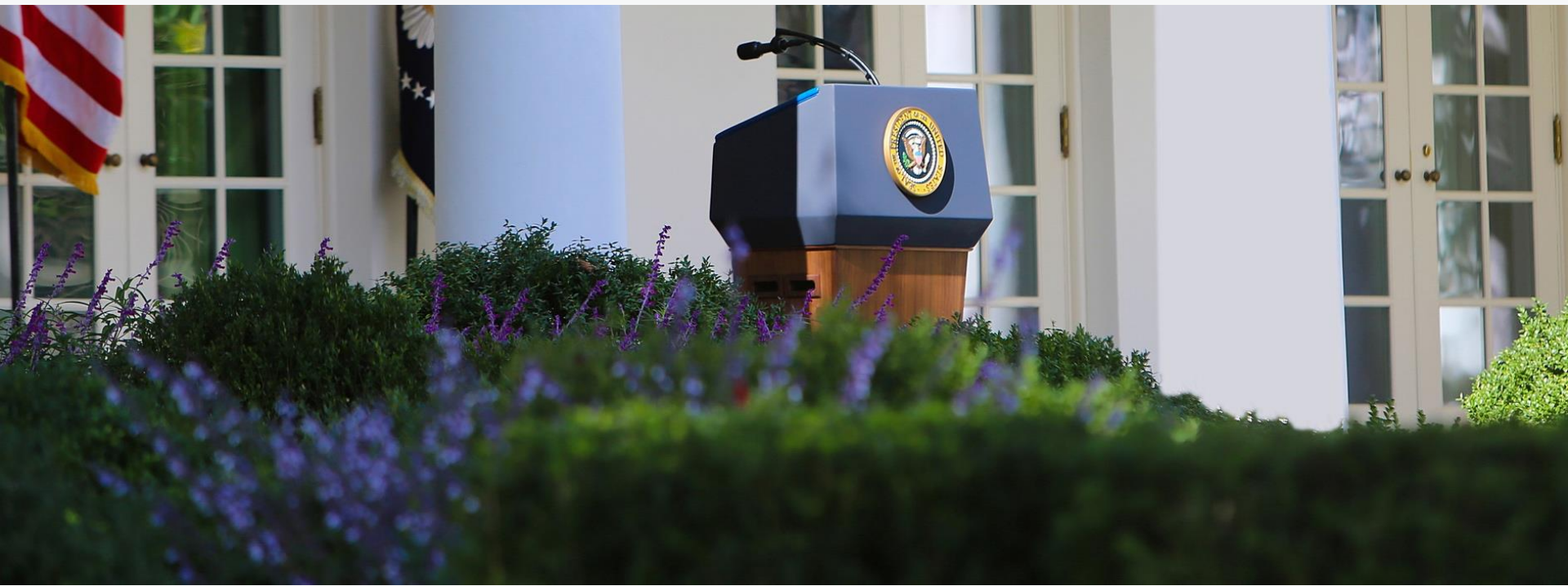


Non-Permitted Questions

- *"Are you a US Citizen?"*
- *"If not, are you authorized to work permanently in the US?"*
- *"Can you please specify your citizenship or immigration status?"*
- *"Do you have 'unlimited' work authorization?"*
- *"Can you provide proof that you are legally able to work in the US for at least 12 months?"*



Executive Actions



H-1B \$100,000 Fee



H-1B \$100,000 Proclamation

- Issued on September 19, 2025 as an entry ban
- DHS/USCIS/CBP Clarifying Memos
- Narrow application
- Highly litigated!

Who Must Pay the Fee? New H-1B petitions filed on or after Sept 21, 2025, 12:01 a.m. EDT for beneficiaries:

- Outside the US without a valid H-1B visa
- Seeking consular/port of entry/pre-flight inspection
- Split decisions (classification approved; status denied)



H-1B \$100,000 Proclamation

Excludes:

- Petitions filed before Sept 21, 2025
- Valid, previously issued H-1B visas
- Petitions for amendment/change/extension granted for beneficiaries inside the US
- Beneficiaries who later travel and reenter on a current H-1B visa



National Interest Exceptions

Granted by DHS
only in
extraordinarily rare
cases

Worker's
presence in the
US as an H-1B
worker is in the
national interest

No American
worker is
available to fill the
role

Worker does not
pose a threat to
the security or
welfare of the US

Requiring the
employer to make
the payment
would significantly
undermine the
interests of the
US

DHS Wage-based H-1B Lottery Rule



New DHS H-1B Lottery Rule

- **New Selection Process:** Replaces random lottery with a wage-based weighted system.
- Higher Wage Level = Higher Chance:
 - Level IV: 4 entries
 - Level III: 3 entries
 - Level II: 2 entries
 - Level I: 1 entry
- **Impact:** Favors senior/high-wage roles. May disadvantage entry-level workers and recent graduates.
- In effect for FY2027 Lottery (April)

Legislative Action



H-1B and L-1 Visa Reform Act of 2025

- Bipartisan Legislation introduced by Senators Grassley & Durbin (S.2928) on Sept. 29, 2025
- **H-1B Wage Minimum:** Must pay highest of prevailing wage, occupation median, or skill-level 2 median — targeting entry-level roles
- **Recruitment Posting:** Jobs must be posted on a Department of Labor (DOL) site for 30 days pre-filing
- **Displacement & Cap Limits:** Bars petitions if U.S. layoffs occurred ± 180 days; H-1B/L-1 workers capped at 50% of workforce



H-1B and L-1 Visa Reform Act

- **Site Restrictions:** No third-party placements without DOL waiver; similar rules apply to L-1 assignments
- **Lottery & Selection Revamp:** Backed wage/STEM-based prioritization, aligning with DHS rule
- **L-1 Additional Measures:** Wage requirements, restricted client-site placement, business-plan filings for new offices, and tighter definition of “specialized knowledge”
- Not yet law, but bipartisan sponsorship suggests growing momentum for immigration reform