



# Why Employers Should Consider Filing H-1B Extensions Before 2025

This guide provides important information regarding the historical context of President Trump's H-1B policies, offering strategic, proactive solutions for H-1B employers and employees to enter the next administration with a plan and peace of mind.

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In January 2025, President-elect Trump will return to the White House for a second term. While we don't know what exactly is ahead for the H-1B program, we can look to the past Trump administration for insight. Under the previous Trump administration, the H-1B program endured highly restrictive policies, with a focus on limiting end client placements and increasing prevailing wages. Given the historical precedent set by his last term, with significant policy shifts expected in his second, H-1B employers should strongly consider filing petitions for H-1B extensions in premium processing for any eligible employees before January 2025.

This proactive approach can help maintain workforce stability and minimize disruption to business operations, in the event restrictive policies return as anticipated. This preemptive measure is not only helpful for employers, who will likely be forced to navigate a challenging landscape for obtaining foreign talent, but also for H-1B employees, who are feeling insecure about their immigration status under the new administration. If eligible for renewal, obtaining a 3-year H-1B extension before January 2025 will provide much needed peace of mind for those worried about the return of highly restrictive H-1B policies. While President Trump's former H-1B policies were eventually struck down in court, it took two years for that to happen. While we feel confident any plainly unlawful policies will be swiftly challenged in court, relief will not be immediate. Further, the Trump administration will have learned from its prior missteps, meaning it may more closely follow administrative procedure to ensure any future policies cannot be so easily challenged. Anything H-1B employers and employees can do now to minimize the impact of potentially restrictive policies is crucial.

### ***Historical Context***

During the previous Trump administration (2017-2021), the U.S. experienced several significant changes to the H-1B program.

Namely, the Trump administration took aim at client site placements, prevailing wages, and the work authorization of H-1B dependent spouses. President Trump's previous actions are outlined below, to provide insight into what we could potentially see in a second term.



## ***Increased Restriction of Third-Party Client Site Placements***

Under the Trump administration, USCIS published the 2018 Policy Memorandum, significantly altering the evidentiary requirements for the H-1B program. For third-party end client projects, the new policy required employers to provide the contracts and purchase orders between all involved parties (end clients, vendors, implementation partners, etc.). This policy was aimed at IT consulting companies, who regularly place H-1B employees on customer projects. Under this policy, if you submitted an H-1B petition for a third-party end client project, USCIS began requiring a letter from each involved party confirming the job title, job duties, degree requirement, and that the H-1B petitioner was the actual employer. Having a letter from each party, however, was not alone sufficient – the letters also had to be supported by written contracts between each involved party. This was highly problematic as many of these contracts are confidential and not readily available. If there was any missing contract, USCIS would swiftly deny the petition. Further, if the contracts did not show a three-year project, USCIS would approve the H-1B petition for only the duration outlined in the contract. Since most purchase orders are issued every 3 to 6 months, this meant sometimes H-1B approvals were granted for a shortened period which had already passed. In other words, by the time the H-1B was approved, it was already expired.

The Trump administration also sought to curtail third-party client placements by shifting the legal obligation for sponsorship to the end client itself. Under a proposed rule, the Trump Administration aimed to require end clients to file their own H-1B petitions as “secondary employers” even though they did not employ or set the pay for the H-1B professional. The rule was ultimately deemed unlawful, but these previous actions show that President Trump’s views on the H-1B program are particularly focused on third-party placements common to the IT industry. Restrictions in this area during his second term could be highly detrimental for H-1B employers in the IT consulting business.



## ***Increased Wage Requirements***

Beyond increasing evidentiary requirements, Trump also sought to increase the required wages for H-1B workers. In 2020, the Department of Labor published a rule changing the formula for calculating prevailing wages. The rule forced companies to pay a minimum wage of \$208,000 a year for over 18,000 combinations of occupations and geographic labor markets, regardless of wage level or position. Ultimately, the rule was blocked by a judge, but this effort by the past Trump administration offers unique insight into how he views the program. His first term was hallmarked by his “Buy American, Hire American” policies. We can expect he may again take actions to price out foreign talent in pursuit of these America-first policies.

The previous Trump Administration also sought to restructure the H-1B lottery system, prioritizing the highest wage level applicants. In January 2021, the Trump Administration published a Final Rule modifying the H-1B visa selection process for Cap-subject petitions to introduce a wage-based system, scrapping the existing lottery system. Under the Final Rule, petitions with the highest proposed wage levels would be granted selection first before the lower wage level registrations were considered. For example, Wage Level IV registrations would be prioritized first. Once all the Wage Level IV registrations had been selected, USCIS would move on to Wage Level III and so on until the selection process was complete. Ultimately, the rule never went into effect, but this past action highlights the incoming President’s views on the H-1B program.

## ***Increased RFEs and Denials***

As a result of the 2018 Policy Memorandum, RFEs and denials exploded. For FY 2017, the RFE rate was 21.4%. This rate increased to 38% within FY 2018 and 40.2% in FY 2019 (when the first quarter saw a 60% RFE rate). It was still 29% in 2020, before falling to 16.2% in FY 2021 when the 2018 policy was struck down. By way of comparison, the RFE rate for FY 2023 was 10.5%

Denial rates for all H-1B petition types were also high. Under the former Trump administration, USCIS no longer granted deference for H-1B extension petitions, meaning scrutiny was just as high as it would be for new H-1B petitions. Denials rates rose to 24% for initial H-1B petitions, with USCIS highly scrutinizing itinerary, specialty occupation, and employer-employee relationship requirements. By contrast, the H-1B denial rate was 3.5% in FY 2023 and 2.2% in FY 2022.



## ***Restrictions on H-1B Dependent Spouse Work Authorization***

In his first term, the Trump administration included a rule to end employment authorization for H-4 dependent spouses on its regulatory agenda. The rule was never published, but we could see similar efforts during the second term. Eligible first time H-4 EAD applicants and those eligible for renewal now should consider filing new/extension cases before January 2025, in the event the incoming administration again seeks to end the H-4 EAD program.

## ***Current State of the H-1B Program***

In October 2023, the Biden administration published a proposed rule to “modernize” the H-1B requirements. To date, the rule has not been finalized. If the Biden administration does not finalize its H-1B rule before President Biden leaves office (which seems unlikely), the incoming Trump administration could issue its own H-1B rule which would likely be much more restrictive and reflect the policies described above. Based on the previous Trump administration policies, we can anticipate he would focus on third-party client site placements, limiting the definition of specialty occupation, and increasing evidentiary requirements and prevailing wages.





Have questions?

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