

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

H-1B Cap Exemptions: Non-Profit Affiliations

The H-1B visa is a temporary work visa that enables U.S. employers to hire non-citizen workers, and provides a pathway for professionals to live and work in the United States after completing their education. Because the demand for an H-1B visa exceeds the cap, an employer must generally enter an [annual lottery](#) in order to sponsor an employee for an H-1B. However, some types of employers are considered [cap exempt](#) and are not subject to the annual H-1B lottery.

Cap Exempt Nonprofit Organizations

Nonprofit colleges and universities are cap exempt, and other nonprofit organizations may also be cap exempt if they are designated by the IRS as 501(c)(3), (c)(4) or (c)(6) organizations and are formally affiliated with a cap exempt organization (usually a college or university or research organization).

The nonprofit must have a written affiliation agreement and demonstrate an active working relationship with a cap exempt institution. Many nonprofits collaborate with colleges and universities, for example, through joint projects or student internship programs.

Example: Val, a DACA beneficiary, works for a nonprofit organization that wants to sponsor him for an H-1B and hire him as a senior communications specialist. The nonprofit organization has an agreement with a local community college to regularly accept student interns. The nonprofit may be considered cap-exempt and can file an H-1B petition for Val without having to go through the lottery.

Affiliation Agreements

While there is no template for the written affiliation agreement, it can take the form of a Memorandum of Understanding (MOU). At minimum, the written document should include:

- A detailed explanation of each party and its work/mission
- An explanation of past, present and future collaborations
- The details, goals, and evaluative metrics for success of the collaboration, if possible

The language describing the collaborations should be detailed, and not copy a template available on the internet. In addition to a written document, there should be specific evidence of the working relationship from the past, present, and future, to the extent possible. USCIS often requests additional evidence when it is the first time an employer is claiming a cap exemption. Cap exemption is reconsidered with each H-1B petition filed, so it is important to maintain an active working relationship with the cap exempt organization.

For more resources for employers on employment-based visas, see the Presidents' Alliance's [Legal Pathways that Work resource hub](#) on the [Higher Ed Immigration Portal](#).