May 26, 2026

Submitted via Regulations.gov

Honorable Brian Pasternak
Employment and Training Administration
United States Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: **Notice of Proposed Rule Making Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States**
RIN 1205–AC30
DOL Docket No. ETA–2026–0001

Dear Administrator Pasternak,

We appreciate the opportunity to comment on the Department's proposal to revise the prevailing wage methodology for the H-1B, H-1B1, E-3, and PERM programs.

As a multi-sector group of organizations in science, policy, higher ed, and research, we share serious concerns about the rule's primary proposal and its likely impact on the early-career talent that is the foundation of much of America's scientific and technological leadership. Despite our different sectors and missions, we are united in a common observation: the rule, as proposed, would do its greatest damage to recent U.S.-educated international graduates, particularly in STEM fields, whom American universities and employers have identified as among the most promising scientific and entrepreneurial talent in the world and who are disproportionately likely to contribute to the United States. It would do so without meaningfully addressing the underpayment it purports to remedy.

The primary proposal threatens the early-career pipeline that is the front door for America's most productive and innovative immigrants

The H-1B program's highest-value function is the retention of U.S.-educated early-career talent. Each year, tens of thousands of international graduates of American universities seek to transition from F-1 student status into H-1B employment, joining the U.S. workforce in research labs, startups, and innovation-driven industries. The economic literature is unambiguous that this cohort drives disproportionate contributions to innovation, patenting, and firm formation. H-1Bs going to the recent graduates of US universities are more likely to invent new products and found successful companies.[1] The National Academies recently concluded that American institutions of

[1] Jennifer Hunt, "Which immigrants are most innovative and entrepreneurial? Distinctions by entry visa." Journal of Labor Economics 29(3), 2011: 417-457 and Natee Amornsiripanitch, Paul A. Gompers, George Hu, and Kaushik Vasudevan, "Getting schooled: Universities and VC-backed immigrant entrepreneurs," Research Policy 52, no. 7 (2023): 104782.

higher education remain the country's principal global talent pipeline. As the committee chair put it: "The U.S. has a talent program. It's called graduate school."[2]

The primary proposal would close that door on precisely the workers the pipeline is designed to retain.

Because prevailing wage levels under longstanding practice, and the Department's primary proposal, are assigned based on the education and experience requirements of the position, early-career workers (especially recent graduates) are structurally concentrated at Wage Levels I and II. This is not because these workers are underpaid. It is because they are early in their careers. DHS's own data confirm that international students transitioning from F-1 to H-1B status earn higher salaries on average than non-F-1 workers, yet are disproportionately certified at the lowest wage levels.[3]

Rather than try to distinguish between Level I and II jobs going to early-career workers and those going to workers whose actual credentials far exceed the requirements of the job, the primary proposal raises the Wage Level I threshold from the 17th to the 34th percentile, and Level II from the 34th to the 52nd. This proposal, therefore, mainly impacts the employment of foreign workers who evidence shows are least likely to be underpaid.

Independent analyses confirm this targeting failure. Recent research by Borjas and Ozimek shows that early-career H-1B workers typically earn substantial premiums over similarly situated U.S. workers.

The implication is clear: the primary proposal simultaneously (a) disproportionately impacts the workers for whom real underpayment is rarest, and (b) largely fails to identify where underpayment actually occurs. As a tool for advancing the statutory goal of protecting similarly employed U.S. workers, the proposal is poorly targeted.

The Department's stated justification for raising these percentiles does not, on examination, hold up.

The proposal's structural defects

The primary proposal is structurally incapable of setting reliable prevailing wages that actually reflect what similarly-situated US workers make. While the uniform percentiles approach the primary proposal relies on has long been utilized by DOL, *continuing* this same premise and simply raising the percentiles misses the mark. Four defects explain why.

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[2] Karin Fischer, "To remain scientifically competitive, the US must take a coordinated national approach", *Latitudes* blog at the *Chronicle of Higher Education*, September 4, 2024, discussing National Academies consensus study report on international talent.
[3] Jeremy Neufeld, "The 'Wage Level' Mirage: How DHS's H-1B Proposal Could Help Outsourcers and Hurt US-Trained Talent," Institute for Progress, September 24, 2025, https://ifp.org/the-wage-level-mirage/.

First, the rule does not use information about the foreign worker's credentials. Under the primary proposal, prevailing wages are assigned based on an employer's description of a job, not a worker's actual education or experience. Level I and II jobs can be filled by a recent graduate, or by a worker with two decades of experience. Rather than try to distinguish between these two very different types of workers, DOL risks excluding the former in an attempt to set prevailing wages better suited to the latter.

Second, the OEWS survey provides insufficient data for conducting direct comparisons between US and foreign workers. The OEWS surveys employers about occupation and geography and does not collect data on workers' education or experience. The Department acknowledges this directly by saying that “[b]ecause the underlying OEWS data do not collect information on worker education or experience, the methodology employed under the current rule may allow positions to be classified at wage levels that are less comparable to the actual education and experience of the alien worker.”

Without such data, percentile thresholds for wage levels will be arbitrarily constructed and cannot serve as evidence-based proxies for experience or education. They are, at best, guesswork about where within the occupational distribution workers at different credential levels can be found.

Third, applying uniform percentiles across every occupation ignores differences in occupational structures. The primary proposal applies the same four percentile cutoffs to every SOC code, despite the fact that occupations differ dramatically in their experience and seniority distributions. A percentile calibrated to an "average" occupation will misclassify workers in any occupation that departs from that average.

Fourth, four wage levels are not granular enough to reflect real market wages. Actual wages vary continuously with education and experience. Collapsing this variation into four bins erases important distinctions the statute asks the Department to make.

The Department's empirical case in the preamble does not justify the proposed percentiles and is fatally flawed

These structural defects call into question the Department’s basic paradigm under its primary proposal. But the specific percentiles it has chosen rest on significant analytical errors.

The Department's central comparison is not apples-to-apples. The NPRM's principal empirical finding is that average wages offered under certified LCAs fall roughly $19,000 below what the Department calls the "Benchmark Value": the average of OEWS mean wages matched to each LCA by occupation, state, and year. The Department describes this matching exercise as an "apples-to-apples" comparison, declaring that it identifies "the going wage of occupations for U.S. workers adjusted for region" and concluding that the resulting gap "represents the average of all salaries by occupation, state, and fiscal year, that match with the millions of LCAs in the Department's data set."

"Similarly situated," as the Department uses the term throughout the preamble, simply means "in the same SOC code and state," but it does not mean workers with comparable credentials. This distinction is decisive. The Department's use of "similarly situated" is neither Congress's intent nor how wage gaps between foreign and native workers are measured in the economics literature. Standard practice, exemplified by recent work from Borjas, He and Ozimek, and Clemens analyzing H-1B wages compute the wage gap by controlling for critical variables in addition to occupation and geography, most importantly education and age.[4]

If the distribution of education and experience among H-1B workers in a given occupation differs from the distribution among U.S. workers in that same occupation, then the Benchmark Value is not measuring underpayment. It is largely measuring the compositional difference between the two populations — the difference in the levels of education and experience. A mean that averages together workers of all ages, all education levels, and all seniority tiers is not a valid comparison for a population among whom the Department itself reports is largely (63 percent) concentrated in the junior wage tiers, at wage levels I and II.

A positive gap between offered wages and prevailing wages is a statistical artifact, not evidence of wage suppression. The NPRM treats the approximately $10,191 difference between average offered wages and average prevailing wages as evidence that the current prevailing wage levels are set too low.[5] It applies the same logic to justify raising Wage Level I, pointing to "the approximately $10,000 gap" between the "average prevailing wage set for Wage Level I [of] $73,804 [and] the average offered wage [of] $83,055." And again in its argument for raising Wage Level IV, citing that Level IV petitions offered actual wages averaging $172,714 against a prevailing wage of $151,095.

But INA §212(n) requires employers to pay *at least* the prevailing wage. A positive gap between offered and prevailing wages is therefore not evidence of an inadequate floor; it is the mathematically guaranteed outcome and would persist at any prevailing wage level.

Treating this artifact as evidence that floors need to be raised, and then calibrating the new floors to close the gap, is circular reasoning that cannot carry the weight the Department places on it. Indeed, if the proposed rule is finalized, the new population of H-1Bs will necessarily have higher wages than the new prevailing wages since only the part of the distribution above the new prevailing wage will be eligible. Extending the Department's logic, perhaps it will find that the new gap is evidence that their current rule misses the mark and justifies still higher wage levels. They can continue this ad infinitum until prevailing wages screen out all foreign workers.

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[4] George J. Borjas, "The H-1B Wage Gap, Visa Fees, and Employer Demand," (NBER working paper 34793, February 9, 2026); Jiaxin He and Adam Ozimek, "The Flawed Paper Behind Trump's $100,000 H-1B Fee," (EIG analysis, February 21, 2026); Michael A. Clemens, "Immigrant-Native Wage Gaps and Immigration Tariffs: Examining the Case for an H-1B Visa Tax," (CReAM discussion paper 072/26, March 13, 2026).

[5] The Department's summary of this finding that "the average wage offered to H-1B workers was approximately $10,191 lower than the OEWS average wage for workers for similarly classified occupations" is patently incorrect, getting the sign backward.

Conclusion

The rule, as drafted, would cause its greatest harm to workers the US should be trying its hardest to retain: early-career, U.S.-educated talent whose economic contributions to the United States are among the best-documented in the labor economics literature. It would do so without meaningfully addressing the underpayment it purports to target, which is more concentrated among mid-career workers competing with early-career Americans, and on the basis of an analytical record that does not support the specific percentiles chosen.

Any adequate methodology for setting prevailing wages must (1) use data capable of distinguishing workers by education and experience, (2) reflect the distributional variation that exists across different occupations, and (3) be granular enough to capture real-market distinctions between workers with meaningfully different credentials.

The undersigned organizations recognize the importance of robust enforcement of U.S. immigration and wage laws and appreciate that an unequivocal goal of U.S. immigration law is to ensure that foreign workers do not undercut the wages of similarly employed U.S. workers. For the reasons described above, we respectfully urge the Department not to finalize the primary proposal as drafted. It does not accomplish that goal and imposes real economic harms without statistically valid justification. The Department's own NPRM identifies an alternative that could address many of these defects, is more consistent with the statute, and is administratively feasible. We urge the Department to give it serious consideration.

Respectfully filed,

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