May 26, 2026

Brian Pasternak, Administrator
Office of Foreign Labor Certification
Employment and Training Administration
Department of Labor
200 Constitution Avenue NW
Room N-5311
Washington, DC 20210

Re: Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States, DOL Docket No. ETA-2026-0001, RIN 1205-AC30

Dear Mr. Pasternak,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the Employment and Training Administration (ETA) in response to the Department of Labor (DOL)'s notice of proposed rulemaking (NPRM), *Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States*, DOL Docket No. ETA-2026-0001**,** as published in the Federal Register on March 27, 2026.
CIS is a national, nonprofit, public-interest organization comprised of concerned members who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. CIS examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America's environmental, societal, and economic interests today and into the future.

I. Background

The Immigration and Nationality Act (INA) assigns responsibilities to the Secretary of Labor relating to the entry and employment of certain employment-based categories of immigrants and nonimmigrants. The INA permits employers to access foreign labor through programs such as the H-1B, H-1B1, and E-3 nonimmigrant visa categories, as well as the permanent labor certification (PERM) process, but only under conditions designed to prevent the undercutting of wages and working conditions for similarly employed U.S. workers. See INA §§ 212(a)(5)(A), 212(n), 214(c)(1), 8 U.S.C. §§ 1182(a)(5)(A), 1182(n), 1184(c)(1).

Congress established prevailing wage requirements as a central safeguard within the H-1B, H-1B1, E-3, and PERM labor certification programs to ensure that the admission of foreign workers does not undercut wages and working conditions for U.S. workers.[1]

[1] *See* INA §§ 212(a)(5)(A), 212(n), 214(c)(1).

For example, statute requires employers petitioning for H-1B workers to attest that they will pay the higher of either the actual wage paid to similarly employed workers at the worksite or the prevailing wage for the occupational classification in the area of intended employment.[2]

Likewise, employers sponsoring foreign workers for permanent labor certification must demonstrate that the employment of the foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.[3] These statutory provisions reflect Congress's clear intent that employment-based immigration programs supplement, rather than displace or depress, the domestic labor force.

DOL has implemented these statutory requirements through an extensive regulatory framework governing prevailing wage determinations.[4] Under these regulations, the prevailing wage is generally defined as the average wage paid to similarly employed workers in a specific occupation within the geographic area of intended employment.[5] DOL primarily relies upon wage data generated through the Bureau of Labor Statistics (BLS)'s Occupational Employment and Wage Statistics (OEWS) survey to establish prevailing wage levels.

Congress also directed DOL to utilize a skill-level framework for prevailing wage determinations.[6] Specifically, INA § 212(p)(4) requires that, "[w]here the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision. Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level."[7]

Pursuant to this statutory mandate, DOL regulations establish four wage levels intended to account for varying degrees of experience, education, supervision, and job complexity.[8] Level I wages correspond to entry-level workers who perform routine tasks under close supervision, while Levels II through IV reflect progressively greater experience, judgment, and responsibility. With this proposed rule, DOL proposes to increase the prevailing wage floors for Wage Level I from the 17th percentile to the 34th percentile, for Wage Level II from the 34th to the 52nd, for Wage Level III from the 50th to the 70th, and for Wage Level IV from the 67th to the 88th, relying upon wage data provided by the OEWS survey.[9]

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[2] INA § 212(n)(1)(A).
[3] INA § 212(a)(5)(A)(i).
[4] *See generally* 20 C.F.R. §§ 655.731, 656.40.
[5] 20 C.F.R. §§ 655.731(a)(2), 656.40(b)(2).
[6] INA § 212(p)(4).
[7] *Id*.
[8] *See* 20 C.F.R. §§ 655.731(a)(1), 656.40(b)(1).
[9] 20 C.F.R. §§ 655.731, 656.40; 91 Fed. Reg. 15454, 15460 (Mar. 27, 2026).

This proposed rule would only apply to *Applications for Prevailing Wage Determinations* pending with the OFLC NPC as of the proposed effective date of the regulation. *Applications for Prevailing Wage Determinations* submitted to the OFLC NPC on or after the effective date of the regulation as well as LCAs filed with the Department on or after the effective date of the regulation where the OEWS survey data is the prevailing wage source and where the employer did not obtain the PWD from the NPWC prior to the effective date of the regulation, would be subject to the new prevailing wage methodology.

II. DOL Must Raise the Prevailing Wage Level Rates.

CIS strongly supports DOL's efforts to raise the prevailing wage levels. The prevailing wage process serves as one of the primary labor protections within the employment-based immigration system.[10] CIS believes that the proposed rule is consistent with the INA, will better protect the interests of both U.S. and foreign workers participating in the affect employment-based programs, and will strengthen public confidence in these programs. CIS, however, strongly urges DOL to amend this rule to require that all wage levels meet or exceed the prevailing wage for an occupation.

1. The Existing Wage Level Structure Encourages Wage Suppression and the Replacement of U.S. Workers.

The current wage level structure has failed to protect U.S. workers from unfair labor competition. By requiring employers to pay market-based wages tied to occupational and geographic labor market conditions, Congress sought to prevent the use of foreign labor as a mechanism to reduce labor costs or circumvent prevailing compensation standards.[11] CIS agrees with DOL's conclusion, however, that the current prevailing wage structure fails reflect market wages and is urgently in need of reform. As DOL has recognized throughout the NPRM, current wage level rates are inadequate to protect the domestic labor force against unfair job competition, displacement, and wage suppression.

Under current system, Level I wages are set at approximately the 17th percentile of wages for the occupation in the geographic area, while Level II wages are set at approximately the 34th percentile. These wage levels particularly are not reflective of prevailing market compensation for qualified workers. By definition, a Level I or Level II wage permits employers to pay substantially below the median wage for the occupation. As DOL explained, "The current prevailing wage structure distorts hiring incentives and compensation by setting entry-level wages far below market rates for positions requiring specialized skills, which incentivizes employers to classify jobs at the lowest permissible level."[12] This creates a regulatory incentive for employers to classify positions at artificially low skill levels to reduce labor costs.

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[10] *See* INA §§ 212(n) and (t).
[11] *Id*.
[12] 91 Fed. Reg. 15454, 15467 (Mar. 27, 2026).

The available evidence strongly suggests that employers have used these employment-based visa programs to access lower-cost labor in ways that undermine congressional intent and disadvantage both U.S. and foreign workers. DOL data shows that 63 percent of H-1B Labor Condition Applications certified in FY 2024 were assigned to Wage Levels I or II.[13] Specifically, 19 percent were certified at Level I and 44 percent at Level II, meaning most H-1B employers were authorized to pay wages at only the 17th or 34th percentile for the occupation.[14] Because employers largely control how job duties are described on LCAs and PERM filings, the system creates strong incentives for strategic under-classification of positions.

DOL's own analysis confirms the consequences of this structure. After comparing certified LCA wages with Occupational Employment and Wage Statistics (OEWS) data by occupation, state, and year, DOL found that H-1B workers were paid on average approximately $10,191 less than similarly situated workers in the broader labor market. In computer-related occupations, the gap widened to nearly $11,000 annually.[15]

Independent research reinforces these findings. A study published by the National Bureau of Economic Research found that H-1B workers earn on average 15 percent less than comparable U.S. workers.[16] Likewise, research by the Center for Immigration Studies found that newly approved H-1B workers in computer-related occupations in 2023 were paid 25.2 percent less than U.S. workers in similar occupations and 13.3 percent less than the average starting salary earned by U.S. graduates with master's degrees in computer and information sciences.[17]

The disparities become even more pronounced at higher wage levels. CIS reported that the 75th percentile salary for new H-1B workers in computer-related occupations in 2023 was $126,000, still five percent below the average salary for software developers overall. By comparison, the 75th percentile salary for U.S. software developers was $167,540 and the 90th percentile was $208,620. Thus, even highly paid H-1B workers earned substantially less than top domestic workers in the same field.[18]

This wage discrepancy gives employers strong financial incentives to prefer foreign workers over similarly qualified U.S. workers. The Economic Policy Institute found that the top 30 H-1B employers laid off at least 85,000 workers in 2022 and early 2023 while simultaneously hiring 24,000 H-1B workers.[19]

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[13] *Id*. at 15471.
[14] U.S. Dep't of Labor, Off. of Foreign Lab. Certification, *Performance Data*, *FY 2024 LCA Data* (2026).
[15] 91 Fed. Reg. 15454, 15467 (Mar. 27, 2026).
[16] Borjas, George, National Bureau of Economic Research, *The H-1B Wage Gap, Visa Fees, and Employer Demand*, Working Paper No. 34793 (Feb. 26, 2026).
[17] Fishman, George, Center for Immigration Studies, *Elon Musk is Right about H-1Bs* (Jan. 9, 2025).
[18] *Id*.
[19] Daniel Costa and Ron Hira, Economic Policy Institute, *Tech and outsourcing companies continue to exploit the H-1B visa program at a time of mass layoffs* (Apr. 11, 2023).

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At the same time, claims of widespread labor shortages in STEM fields are increasingly difficult to reconcile with labor-market data. The population of U.S. workers with relevant credentials and the unemployment rate and underemployment among U.S. graduates in computer science and engineering, two sectors heavily reliant on H-1B labor, are growing despite continuous Silicon Valley demands for access to more H-1B visas. CIS research further shows a general decline in wages among most STEM occupations, not an increase.

The table below reports annual wages for workers in STEM fields in 2017 and 2022:

No Wage Growth in STEM Occupations 2017 to 2022 (in 2022 dollars)

STEM Occcupations	Average annual wages 2017	Average annual wages 2022	Change in Annual Wages 17-22	Average annual Change in Wages 2017 to 2022
Technology	$125,031	$127,149	1.7%	0.3%
Math	$112,635	$106,677	-5.3%	-1.1%
Engineering	$127,515	$121,188	-5.0%	-1.0%
Science	$102,657	$95,555	-6.9%	-1.4%
All STEM workers	$122,664	$119,971	-2.2%	-0.4%
All College or more	$106,871	$102,594	-4.0%	-0.8%

Source: Pubic use 2017 and 2022 public use American Community Survey, wages and salary income. Analysis limited to full-time year-round workers with a bacchelor's degree or more ages 21 and older.

Adjusted for inflation, the table shows that real wages between 2017 and 2022 declined for three out of the four major STEM categories: Math, Engineering and Science. It also declined 2.2% for STEM workers overall. Only in the technology sector did wages increase, but the increase was just 1.7% over the five-year period or .3% on an annualized basis.

As DOL correctly observed, "The resulting distortions from a prevailing wage methodology untethered from rigorous mathematical analysis allow some firms to replace qualified U.S. workers with lower-cost alien workers, defeating the purpose of the INA's wage protections and suppressing the wages for U.S. workers who remain employed in occupations saturated by H-1B workers."[20] The current wage structure undermines wages and working conditions in heavily impacted industries, harming both U.S. workers, who must compete against artificially cheaper labor, and foreign workers, who are often underpaid and more vulnerable to exploitation. Raising prevailing wage levels would help restore the integrity of the system by increasing the wage

[20] 91 Fed. Reg. 15454, 15469 (Mar. 27, 2026).

floor, narrowing compensation disparities, and reducing the financial incentive to substitute foreign labor for qualified U.S. workers.

2. DOL Must Amend the Rule to Ensure That All Four Wage Levels Meet or Exceed the Prevailing Wage.

While CIS supports DOL's efforts to raise prevailing wage levels through rulemaking, the wage rates proposed in this rule remain insufficient to satisfy the INA's labor protection requirements. DOL should further revise the prevailing wage methodology to ensure that every wage level is set at or above the true prevailing wage for the occupation in the area of intended employment.

As proposed, the rule would continue to authorize wage levels that fall significantly below the actual market wages earned by similarly employed U.S. workers. Allowing employers to hire foreign workers at sub-prevailing wages undermines the INA's core purpose of protecting domestic labor markets from unfair wage competition.[21] It also creates a financial incentive for employers to replace or undercut U.S. workers with lower-cost foreign labor, contrary to the statutory framework Congress established to safeguard the wages and working conditions of American workers.

The INA's employment-based nonimmigrant and immigrant visa programs were not created to provide employers with access to discounted labor. Rather, Congress structured these programs to protect the wages and working conditions of U.S. workers while permitting employers to fill legitimate labor shortages. The H-1B statute specifically requires employers to pay the higher of the actual wage or the prevailing wage for the occupational classification in the area of employment.[22] Similarly, the permanent labor certification process requires the Department to certify that the employment of a foreign worker will not adversely affect the wages and working conditions of U.S. workers similarly employed.[23] Wage levels that are intentionally set below the market prevailing wage are fundamentally inconsistent with these statutory protections.

In addition to setting two of the four wage levels below the prevailing wage, the data set DOL uses, OES, includes the wages of workers who themselves may not be considered to qualify for a "specialty occupation," the only type of occupation an H-1B worker can perform under that visa classification, further diluting the pay an H-1B worker should receive.[24] The statutory framework, however, requires DOL to set the prevailing wage levels based on what workers similarly employed to foreign workers make, taking into account worker's qualifications.[25]

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[21] See 8 U.S.C. § 1182(n)(1)(A).
[22] *Id*.
[23] *See* 8 U.S.C. § 1182(a)(5)(A).
[24] *See* 85 Fed. Reg. 63872, 63880-81 (Oct. 8, 2020), U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook* (last modified Aug. 28, 2025).
[25] INA § 212(n)(1)(A)(i)(II) ("The employer – (I) will pay the nonimmigrant the greater of the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment.").

It is inappropriate to consider the wages of the least educated and experienced workers in OES occupational classifications in setting the prevailing wage levels. While OES may be the best data set DOL has available to consider wage statistics, DOL, has never offered a full explanation or economic justification for the way it currently calculates the prevailing wage levels it uses for these foreign labor programs.[26] As DOL explained in 2020, "Common sense dictates that workers making less than the median wage of the occupation cannot be regarded as being similarly qualified to the most competent and experienced members of that occupation."[27]

This structure creates predictable economic incentives for labor substitution. Employers are encouraged to classify positions at the lowest possible wage level because doing so reduces labor costs. The result is not merely theoretical wage suppression, but an affirmative market distortion in which employers utilizing foreign labor programs gain a structural cost advantage over employers hiring U.S. workers at true market rates. In many industries heavily dependent on employment-based visa programs, wage level manipulation has become a standard business practice rather than a rare occurrence.

DOL should therefore revise the wage level methodology in the proposed rule so that no wage level falls below the occupational prevailing wage (50th percentile). At minimum, the lowest permissible wage level should begin at or above the median occupational wage in the area of intended employment. Higher wage levels should then reflect progressively greater experience, specialization, supervision responsibilities, or advanced skills. Such a system would preserve the utility of wage stratification while ensuring compliance with the INA's labor protection objectives.

Setting wage level 1 above the 50th percentile will reflect the statutory requirement that workers be paid at least the prevailing wage while accounting for the existence of some workers in the OES occupation classification that inevitably would not meet the requirements for H-1B visas. Artificially lowering the prevailing wage standards through DOL's wage level rate regulations allow employers to hire and retain foreign workers at wages well below U.S. workers in the same labor market, performing similar jobs, and possessing similar levels of education, experience, and responsibility receive, contrary to the language and spirit of the INA. Employers seeking to hire foreign workers would still retain access to needed talent but would no longer be able to do so through artificially discounted wage structures. This would reduce incentives to displace U.S. workers, diminish downward wage pressure in affected occupations, and restore greater confidence that employment-based visa programs operate in the national interest rather than as mechanisms for labor arbitrage.

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[26] *See* 78 Fed. Reg. 24047, 24051 (Apr. 24, 2013) ("Since the OES survey captures no information about actual skills or responsibilities of the workers whose wages are being reported, the two-tier wage structure introduced in 1998 was based on the assumption that the mean wage of the lowest paid one-third of the workers surveyed in each occupation could provide a reasonable proxy for the entry-level wage. DOL did not conduct any meaningful economic analysis to test the validity of that assumption ….").

[27] 85 Fed. Reg. 63872, 63881 (Oct. 8, 2020).

3. Raising the Prevailing Wage Level Rates Will Improve Public Confidence in the Affected Employment-Based Nonimmigrant and Immigrant Programs.

CIS strongly believes that raising prevailing wage level rates would improve public confidence in the affected employment-based nonimmigrant and immigrant visa programs. Public support for employment-based immigration depends in substantial part on the perception that these programs operate to supplement the wages and working conditions of U.S. workers. When prevailing wage levels are set artificially low, employers are incentivized to use foreign labor as a cheaper alternative to hiring U.S. workers, reinforcing the perception that these programs facilitate wage arbitrage rather than fill genuine labor shortages. That perception undermines confidence not only in the H-1B and PERM systems themselves, but also in the broader legal immigration framework.[28]

Higher prevailing wage levels would help restore the integrity and credibility of these programs by better ensuring that employers petition for foreign workers because they possess needed skills, rather than because they can be hired at below-market wages. Requiring employers to offer wages that more accurately reflect market compensation would reduce incentives to displace U.S. workers, especially with regards to entry level professionals who are often most vulnerable to unfair competition with foreign workers.

The public is more likely to support legal immigration programs when there are meaningful safeguards demonstrating that the admission of foreign workers will not erode domestic labor standards. Raising prevailing wage levels would therefore not only strengthen worker protections but also bolster public confidence that the federal government is administering these programs in a manner consistent with protecting the U.S. labor market.

III. DOL Must Increase Agency Scrutiny Over Alternative or Private Wage Surveys.

DOL declined in the NPRM to eliminate the use of private wage surveys and other alternative wage sources in this proposal. While preserving some flexibility may be appropriate in limited cases, DOL must recognize that alternative wage surveys can also be used to artificially suppress prevailing wage determinations. Accordingly, CIS strongly recommends DOL amend the proposed rule to increase DOL scrutiny over the use of alternative or private wage surveys in prevailing wage determinations.

Although the OEWS survey administered by the BLS is designed to provide a standardized, transparent, and methodologically consistent wage framework, employers are currently permitted in many circumstances to rely on privately produced alternative wage surveys that frequently produce significantly lower wage rates. Under 20 C.F.R. § 655.731, an employer has a number of options to determine the prevailing wage for a LCA. An employer may use the "actual wage," or

[28] *See* Vaughan, Jessica and Siddiqui, Mahvash, Center for Immigration Studies, *The H-1B Tsunami: Why the U.S. Mus Act to Protect American Jobs, Security, and Prosperity* (Dec. 15, 2025).

"wage rate paid by the employer to all other individuals with similar experience and qualifications for the specific employment in questions," the OES wage; the wage set in an applicable collective bargaining agreement, an applicable wage set by the *Davis-Beacon Act* or *McNamara-O'Hara Service Contract Act*, an Office of Foreign Labor Certification National Processing Center prevailing wage determination, or a wage set by an "independent authoritative source" or "other legitimate sources of wage data."[29]

If an employer chooses to rely on "an independent authoritative source" or "anther legitimate source of wage information," the survey must reflect the weighted average wage paid to workers similarly employed in the area of intended employment; reflect the median wage of workers similarly employed if the survey provides such a median and does not provide a weighted average; be based on the "most recent and accurate information available;" and be reasonable and consistent with recognized standards and principles in producing the prevailing wage.[30]

Alternative wage surveys are particularly susceptible to manipulation, however, because they are often based on narrow geographic areas, selectively defined occupations, small sample sizes, or employer-biased methodologies that do not accurately reflect actual market wages. Employers and industry groups have strong financial incentives to obtain surveys that minimize required wage obligations. The resulting wage determinations may bear little resemblance to the true market value of labor in a given occupation and region. This creates an uneven playing field in which employers utilizing private surveys may secure access to foreign labor at wages substantially below those reflected in the government's own data.

The Department should therefore establish substantially stricter standards governing the acceptance and use of alternative wage surveys. At minimum, DOL should require that any alternative survey: (1) utilize statistically valid sample sizes; (2) make transparent methodology and underlying data disclosures; (3) cover sufficiently narrow geographic and occupational categories; (4) be independently conducted by neutral third parties without financial conflicts of interest; and (5) demonstrate that the resulting wage rates are not systematically lower than comparable OEWS wage data absent compelling justification. The Department should also reserve authority to reject surveys that appear designed primarily to evade otherwise applicable prevailing wage obligations.

In addition, DOL should increase auditing and enforcement activity relating to alternative wage surveys. Employers relying on private surveys should be required to maintain full supporting documentation and submit such materials upon request. DOL could further publish additional guidance identifying common deficiencies and unacceptable survey practices to deter abuse and promote uniform compliance. At a minimum, DOL should (1) make public all non-PIV data and methodological information for all submitted surveys so third party researchers can analyze and confirm surveys' findings; (2) reject surveys with insufficient sample sizes or overly narrow occupational categorizations; (3) prohibit the use of surveys designed primarily around

[29] 20 C.F.R. § 655.731(a).
[30] 20 C.F.R. § 655.731(b)(3)(iii)(C).

employers that disproportionately rely on foreign labor; and (4) increase audit and enforcement activity related to questionable wage survey submissions. This includes benchmarking private wage surveys against government data to compare the results of the private survey against OEWS data to determine whether the survey reasonably reflects actual labor market wages. Without stronger oversight, employers should be expected to attempt to circumvent the intent of the revised prevailing wage structure through aggressive use of alternative wage data.

Enhanced scrutiny is particularly important because, as discussed above, prevailing wage determinations serve as a central protection against wage suppression within employment-based immigration programs. If employers are permitted to circumvent prevailing wage safeguards through selectively constructed private surveys, then increases to prevailing wage level rates alone may not adequately protect U.S. workers. Strengthening oversight of alternative wage surveys would therefore complement the Department's broader efforts to ensure that employment-based visa programs operate in a manner consistent with congressional intent and the protection of domestic labor markets.

IV. An "Experience Benchmarking" Alternative is Vulnerable to Abuse by Employers and May Undermine the Interests of Some U.S. Workers.

DOL solicited comments on an alternate scheme, referred to as "Experience Benchmarking." While CIS believes that certain aspects of Experience Benchmarking has value – particularly with regards to replacing employers' ability to assign a worker's wage level with an objective framework based on the individual worker's experience level – CIS believes that the scheme is nevertheless vulnerable to abuse by employers and may undermine the interests of U.S. workers.

The current prevailing wage framework often permits employers to classify positions requiring substantial skill, responsibility, and productivity at artificially low wage levels simply because the employer characterizes the role as "entry level" or assigns a limited experience requirement.[31] By comparing the sponsored alien worker's wage to the wages earned by U.S. workers with comparable education and experience in the same occupation and geographic area, however, Experience Benchmarking aims to better reflect market wages for that position. While presented as an objective methodology, however, Experience Benchmarking can operate to the detriment of similarly employed U.S. workers by allowing employers to obtain high-skilled labor at below-market wages.

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[31] *See, e.g.,* Costa, Daniel, Hira, Ron, Economic Policy Institute, *H-1B visas and prevailing wage levels, A majority of H-1B employers – including major U.S. tech firms – use the program to pay migrant workers well below market wages* (May 4, 2020)); Center for Immigration Studies, *Untold Stories: The American Workers Replaced by the H-1B Visa Program* (May 4 2019); *U.S. Att'y's Office, S.D. Ohio, Wright State University Agrees to Pay Government $1 Million for Visa Fraud* (Nov. 16, 2018) (Investigators found the university "grossly misused the H-1B visa cap exemption," placing H-1B workers with outside companies so cap-subject firms could use those workers via contracts).

According to the NPRM, Experience Benchmarking refers to the practice of assigning wage levels based primarily on the employer's stated minimum years of experience for a position, rather than on the actual market value of the occupation itself. As DOL stated, "Experience Benchmarking seeks to adjust prevailing wage levels by merging the occupational and geographic specificity of the BLS OEWS with education- and experience- adjusted wage estimates derived from the American Community Survey (ACS) of the Census Bureau."[32]

Moreover, "Because 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 or professional experience of the alien worker. As a result, an alien worker with significantly higher education or professional experience could be paid a wage benchmarked to U.S. workers with comparably lower levels of education and experience."[33]

For example, in the H-1B context, if Experience Benchmarking was adopted, then an H-1B employer would need to attest that the wage offered to an H-1B worker would be the median wage paid a U.S. worker in the same locality and occupation and with the same education and experience as the H-1B, and the OFLC Administrator would provide a searchable system that provides the public four levels of resulting experience-benchmarked OEWS wages that indicate which foreign workers are the most skilled and earning the highest wage premia: OEWS Level 1 (Typical), OEWS Level 2 (Specialized), OEWS Level 3 (Demanding), OEWS Level 4 (Highly Demanding).[34]

For PERM applications, where employers are required to obtain a formal prevailing wage determination directly from DOL, DOL's Experience Benchmarking scheme would require that the prevailing wage is either the higher of (1) the OEWS Level 1 corresponding to the minimum education and experience requirements of the position, and (2) if the foreign worker is an H-1B worker, the prevailing wage rate identified on the certified Labor Condition Application listed on the H-1B petition approved for that foreign worker.

Experience benchmarking, however, maintains opportunities for abuse. Under this scheme, employers retain substantial discretion in defining job requirements, including the minimum years of experience necessary for a position. If the system becomes more precise on education and experience, employers can still manipulate SOC code selection, occupational framing, and geographic assignment to keep wages artificially low. As a result, two employees may perform materially identical work, yet the H-1B worker may be assigned a lower wage level based on how the employer drafted the position description. Such practices would allow wage suppression to persist for both foreign workers and across the broader labor market.

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[32] 91 Fed. Reg. 15454, 15489 (Mar. 27, 2026).
[33] *Id*. at 15489-90.
[34] *Id*.

Additionally, Experience Benchmarking would undermine the DHS's intent in promulgating its new weighted selection rule.[35] This weighted selection process generally favors the allocation of H-1B visas to "higher-skilled and higher-paid aliens" and to "disincentivize abuse of the H-1B program to fill relatively lower-paid, lower-skilled positions."[36] DHS promulgated this rule to allow USCIS "to implement the numerical cap in a way that incentivizes employers to offer high wages, or to petition for positions requiring higher skills and high-skilled aliens, that are commensurate with higher wage levels."[37] While Experience Benchmarking may increase the wages offered to entry-level workers modestly compared to other entry-level workers, it would allow lower-skilled workers to be prioritized over higher-skilled workers so long as they are making market wages for entry-level work.

This is because under an Experience Benchmarking scheme, wage levels are determined not solely by years of experience, but also by where a worker's offered salary falls relative to the broader wage distribution for the occupation. As a result, an employer could classify a low-skill worker with minimal practical experience as a Level IV worker simply by offering compensation above that paid to many other entry-level employees in the occupation. Accordingly, interaction between experience benchmarking and USCIS's new weighted H-1B selection system could fundamentally alter labor market incentives in ways that could disadvantage U.S. workers, particularly new graduates and early-career professionals.

Moreover, when paired with USCIS's new H-1B selection system, Experience Benchmarking would create strong incentives for employers to strategically structure compensation offers to maximize lottery selection odds rather than to address genuine labor shortages. Experience Benchmarking risks concentrating employer demand away from domestic entry-level labor markets and toward foreign workers who can be strategically positioned within the H-1B system. Employers may determine that paying a somewhat higher wage to an H-1B candidate is economically rational if it substantially increases the likelihood of securing that worker long-term through the visa selection process. In effect, the immigration system would begin rewarding employers not for recruiting genuinely experienced or uniquely skilled workers, but for manipulating wage positioning within statistical distributions.

Entry-level U.S. workers already face significant barriers to labor market entry in many high-skilled industries. If employers increasingly reserve highly compensated junior positions for H-1B candidates because those positions improve lottery selection odds, domestic workers may encounter fewer opportunities to obtain the initial work experience necessary to lead to long-term career advancement.

The INA's labor protections are intended to protect opportunities for U.S. workers across the entire labor market, including workers at the beginning of their careers. A system that advantages foreign workers in entry-level hiring, simply because employers can structure compensation to

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[35] 90 Fed. Reg. 60864 (Dec. 29, 2025).
[36] *Id*.
[37] *Id*.

obtain preferential H-1B selection treatment, risks displacing U.S. workers precisely at the stage when obtaining employment is most difficult. The long-term effect may be reduced workforce participation among U.S. graduates, lower domestic talent development, and greater dependence on temporary foreign labor pipelines.

V. Conclusion

Stronger prevailing wage requirements are consistent with the broader structure and purpose of the INA's employment-based visa provisions. Accordingly, while CIS believes this proposed rule represents an important step toward improving the integrity of prevailing wage determinations, DOL must adopt higher wage level rates than those currently proposed by requiring that all four wage levels meet or exceed the prevailing wage for an occupation. Doing so would bring the regulatory scheme in line with federal law and more faithfully implement the INA's worker-protection requirements by reducing opportunities for wage arbitrage and better ensuring that employment-based immigration programs operate to supplement, not supplant the U.S. workforce.

CIS strongly recommends that DOL amend its regulations to apply stronger scrutiny over private or alternative wage surveys. To reduce fraud and abuse, DOL must also require that methodology and data used for a private or alternative survey be made public so independent, third-party researchers can review and confirm the surveys' findings.

Finally, although certain aspects of Experience Benchmarking may represent an improvement over the status quo, particularly by limiting employers' unilateral discretion to assign wage levels, CIS believes that the scheme remains highly susceptible to employer manipulation and may ultimately undermine the interests of many U.S. workers. Congress designed the INA's labor protection provisions to safeguard U.S. workers across all experience levels, not merely those at the top of the labor market. Experience Benchmarking, however, risks distorting that framework by disadvantaging entry-level and younger U.S. workers while incentivizing employers to favor younger foreign workers classified at artificially elevated wage levels. In practice, the system could encourage the displacement of less-experienced U.S. workers and skew employment-based immigration programs away from their intended purpose of filling genuine high-skill labor shortages with high-skill foreign workers, consistent with congressional intent.