CompeteAmerica

The Alliance for a Competitive Workforce

October 24, 2025

Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive, Camp Springs, MD 20746

Re: **Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions**
Notice of Proposed Rulemaking
Department of Homeland Security Docket No. USCIS-2025-0040

To Whom It May Concern:

The Compete America coalition advocates for ensuring that the United States has the capacity to educate domestic sources of professional talent and to obtain and retain the foreign talent necessary for U.S. employers to continue innovating and creating jobs in America. Our coalition members include higher education associations, industry associations, the nation's largest business and trade associations, and individual employers — all working together to advance access to high-skilled talent, specifically those in science, technology, engineering, and mathematics (STEM) field, by growing critical workforce development opportunities for U.S. workers stateside and improving the U.S. high-skilled immigration system. For more than 20 years, Compete America has worked with successive administrations and Congress on issues critical to the professional global mobility of talent, as well as the functionality and integrity of the U.S. employment-based immigration system.

Members of our coalition are among the nation's foremost creators of jobs for U.S. workers. Our members contribute to the nation's economic strength and global competitiveness. In addition to the U.S. workers who comprise the vast proportion of their workforces, our members also leverage the talents of well-educated and highly skilled professionals from abroad, including professionals working in STEM fields. Many of these highly sought-after professionals have been drawn to this country not only by the vast opportunities for innovation and growth offered by U.S. employers, but also by America's unmatched higher education system and world-class research and development enterprise.

Compete America therefore has a strong interest in helping to ensure that the U.S. immigration process effectively promotes – with appropriate integrity and security safeguards – the desirability and ability of high-skilled foreign-born professionals to be employed in our country.

We welcome the opportunity to respond to the Notice of Proposed Rulemaking (NPRM) that the Department of Homeland Security ("DHS" or "the agency") published on September 24, 2025, "Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions."

However, as noted in a letter we submitted with 28 other organizations, 30 days is insufficient to provide meaningful comment and analysis for a rule that will have a significant economic impact on the members of our coalition, many of which lead in the creation and contribution to critical and emerging technologies like AI, quantum computing, advanced robotics, biotechnology, semiconductors and other industries that this administration wants to grow in the United States, where it is essential to attract and retain the best high-skilled global talent.

THE NPRM EXCEEDS AGENCY AUTHORITY AND DHS HAS NOT ADEQUATELY ASSESSED THE ECONOMIC AND PRACTICAL IMPLICATIONS

In the NPRM, DHS states that "DHS aims to implement the numerical cap in a way that incentivizes employers to offer higher wages, or to petition for positions requiring higher skills and higher-skilled aliens, that are commensurate with higher wage levels. The proposed process would favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels."

Compete America would welcome the opportunity to work with the administration and Congress to find solutions to ensure the limited number of H-1B visas available are allocated in the most effective manner, without compromising the United States' ability to compete in the global economy. But as we explain in more detail below, we oppose this proposed rule as drafted.

As a threshold matter, DHS lacks the legal authority to implement a new selection process for H-1B visas that departs from the statutory framework. Additionally, it is critical that DHS give employers sufficient time to participate in the rulemaking process and, if a rule is finalized, to adjust workforce planning and operations to implement a new process. Employers typically begin planning for the H-1B lottery at least six months in advance. Therefore, any changes to the registration or selection process must be announced with ample lead time to avoid disruption.

Substantively, the NPRM would not accomplish the agency's stated goals. The NPRM would not promote the selection of individuals representing the highest economic value to the United States, and may make it less likely that highly skilled individuals working in fields critical to U.S. national interests can keep their talents in the United States. The NPRM would also unduly disadvantage early-career professionals, particularly those who are recent graduates of U.S. universities and colleges.

Structural Concerns

Wage Prioritization is Not Permitted Under the INA

In establishing the H-1B nonimmigrant classification, Congress spoke clearly about the manner in which U.S. Citizenship and Immigration Services (USCIS) must consider petitions. The Immigration and Nationality Act (INA) provides that foreign nationals who are subject to the numerical limitations "shall be issued visas (or otherwise provided nonimmigrant status) *in the order in which petitions are filed* for such visas or status."[1]

There is no ambiguity in the statute that would permit DHS to independently establish a new prioritization scheme for H-1B visa allocation through rulemaking. Over the years, DHS has made technical changes to the allocation process by regulation – including establishing the random lottery and electronic registration process – but these changes have consistently adhered to the statutory mandate. DHS has never deviated from Congress's clear directive to issue visas "in the order in which petitions are filed."

Indeed, the agency itself acknowledged the limitations of its authority in its 2019 rulemaking to institute the H-1B registration process. In response to comments suggesting other ways DHS could allocate and prioritize cap-subject H-1B petitions (e.g., by wage), the agency stated unequivocally: "DHS believes, however, that prioritization of selection on other bases such as those suggested by the commenters would require statutory changes."[2]

Importantly, Congress has specifically sought to legislate on this issue. A few days after DHS published the NPRM, bipartisan members of Congress introduced the H-1B and L-1 Visa Reform Act of 2025, which seeks to amend the INA to allow prioritization of H-1B visa allocations based on factors, including wage level.[3] In the U.S. Citizenship Act, introduced in 2021 and 2023, lawmakers proposed to give DHS authority to prioritize allocation of H-1B visas by wages, in consultation with the Department of Labor.[4] If DHS already had the legal authority to change H-1B visa allocation by regulation, Congress would not have attempted to legislate on the same exact subject or to delegate this authority to the agency.

Given the clear statutory directive and consistent legislative and regulatory history surrounding the H-1B program, the structural changes proposed in the NPRM are unlikely to withstand legal challenges.

[1] INA § 214(g)(3) (emphasis added).
[2] 84 Fed. Reg. 888 at 913 (January 31, 2019).
[3] H-1B and L-1 Visa Reform Act of 2025, S.2928, 119th Cong. § 104 (2025).
[4] U.S. Citizenship Act, H.R. 1177, 117th Cong. § 3407 (2021); U.S. Citizenship Act, H.R. 3194, 118th Cong. § 3407 (2024).

The Agency Must Provide Sufficient Time for Employers to Comment on and Prepare for Any Changes to the H-1B Selection Process

Given the complexity and importance of this regulation, and for the reasons outlined in the letter Compete America has signed, the agency should provide the public with a full 60-day comment period in which to provide substantive feedback. If the administration does seek to move forward with administrative changes to the H-1B registration selection process, it is critical that DHS give employers sufficient time before registration opens to prepare to adapt to any change. Employers typically begin planning for the H-1B lottery at least six months in advance.

Employers are already well underway in their planning for the upcoming FY 2027 cap season. As DHS acknowledges, the proposal would require employers to provide additional information on each registration, including the corresponding Occupational Employment and Wage Statistics (OEWS) wage level, Standard Occupational Classification (SOC) code, and area of intended employment. This requires a separate analysis that is normally completed at the Labor Condition Application (LCA) preparation stage.

DHS has also proposed form revisions to implement this change. Consistent with the Paperwork Reduction Act, these changes would require two formal review processes of 60 and 30 days, respectively, and time for the agency to properly consider stakeholder comments. U.S. employers will also need sufficient time to operationalize the new forms, which means it would not be feasible for this rule to be finalized without sufficient implementation time. It would be extremely disruptive to introduce any changes to this process and required forms without adequate opportunity to comment and prepare.

The NPRM Would Not Accomplish the Agency's Stated Goals

Compete America has advocated for a prioritization-based selection process for H-1B visas for more than two decades. The United States continues to face a persistent and well-documented shortage of qualified STEM professionals, a deficit that is likely to worsen as global competition for these workers increases.[5] As the nation's largest STEM employers, our recommended approach to prioritization is grounded in a thorough understanding of which professionals and skill sets are most likely to strengthen the United States' ability to compete in the global technology market.

For example, prioritizing U.S.-educated foreign professionals is a logical and strategic starting point. U.S. STEM programs consistently rank among the world's leading educational systems, and every graduate represents an indirect investment by U.S. taxpayers. Capturing that

[5] *See* Eduardo Batista, China's new K visa beckons foreign tech talent as US hikes H-1B fee, Reuters (Sept. 29, 2025), https://www.reuters.com/sustainability/sustainable-finance-reporting/chinas-new-k-visa-beckons-foreign-tech-talent-us-hikes-h-1b-fee-2025-09-29/.

investment by extending work opportunities to foreign-born STEM graduates of our nation's technical institutes and programs strengthens the U.S. workforce and innovation ecosystem. Furthermore, our prioritization proposals have focused on supporting employers who seek a limited number of H-1B visas for candidates who complement their existing U.S. workforces, rather than substitute for them.

However, the NPRM does not sufficiently consider either of these fundamental points. Instead, the NPRM applies a generalized wage level-based standard with the intent to achieve nominal increases in reported wages. This approach is problematic because OEWS wage levels vary significantly by geographic area, which may disadvantage certain regions, and we believe it is unlikely to fulfill the government's objectives or generate meaningful upward pressure on U.S. wages. Additionally, the NPRM may inadvertently result in a surplus of late-career professionals and a significant deficit of early-career talent critical for sustaining and expanding America's technology sector in the future.

Specifically, DHS has proposed to "weight" H-1B registrations based on the highest OEWS wage level the beneficiary's proffered wage would equal or exceed the relevant SOC code in the area of intended employment. The agency states that it aims to incentivize "employers to offer higher wages, or to petition for positions requiring higher skills and higher skilled aliens, that are commensurate with higher wage levels" and that the proposed process would "favor the allocation of H-1B visas to higher skilled and higher paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels."

As drafted, the NPRM would not accomplish these goals and, in fact, would likely produce consequences that are contrary to the government's aims. Our members have serious concerns about how the proposed system would work in practice.

The NPRM Would Favor Lower Paying Jobs Over Higher Paying Jobs

The OEWS wage levels, which correspond to entry level (Level I), qualified (Level II), experienced (Level III), and fully competent (Level IV), represent salary progression within an individual occupation in a geographic area. Weighting the H-1B lottery solely based on the OEWS wage level that the offered salary meets or exceeds would, in many cases, give preference to individuals earning a lower salary in lower value occupations over individuals earning a higher salary in higher value occupations because of the way wage levels are distributed within occupations.

An Institute for Progress (IFP) analysis of government data provides the following examples:

- *An otolaryngology surgeon certified at Level I with a salary of $300,000.*
- *A PhD technical staff member . . . at Level II with a salary of $280,000.*
- *A CEO/CTO of a manufacturing startup certified at Level II with a salary of $300,000.*

- *An acupuncturist certified at Wage Level III with an annual salary of $41,600.*
- *A landscape architect certified at Wage Level IV with a salary of $36,090.*[6]

Under the NPRM, the landscape architect with a $36,090 salary and an acupuncturist with a salary of $41,600 would be ranked higher than the AI researcher, surgeon, and startup executive and would have significantly higher chances of selection in the H-1B registration lottery. This is despite their salaries being substantially lower.

Ultimately, as these examples illustrate, the rule would not promote individuals representing the highest economic value to the United States or even prioritize higher salaries, and may make it less likely that individuals working in fields critical to U.S. national interests can keep their talents in the United States. These results do not align with the agency's goals as described in the NPRM, and therefore do not justify the significant disruptions the proposal would cause if implemented as drafted.

The NPRM Fails to Recognize the Importance of All Career Levels to American High-Skilled Competitiveness

Congress required that when DOL "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 levels of supervision."[7] In imposing this mandate, Congress recognized experience as a critical determinant in setting compensation within the U.S. labor market. Accordingly, DOL issued guidance in 2005 to provide four "skill levels": Level I "entry level," Level II "qualified," Level III "experienced," and Level IV "fully competent."[8]

The agency acknowledges that "the relevant prevailing wage level is selected by comparing the requirements for the job opportunity to the occupational requirements, including the tasks, knowledge, skills, and specific vocational preparation (education, training, and experience) generally required for acceptable performance in that occupation."[9] However, the NPRM then states that the agency believes that the "proffered wage that corresponds to the prevailing wage rate reflecting a higher wage level is generally a reasonable proxy for the higher level of skill required for the position," without reference to career level or experience. This represents a mischaracterization of both the purpose and economic rationale underlying the OEWS prevailing wage framework.

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[6] *See* Jeremy Neufeld, *The Wage Level Mirage*, Institute for Progress (September 24, 2025), https://ifp.org/the-wage-level-mirage/ (emphasis added).
[7] Immigration and Nationality Act § 212(p)(4).
[8] ETA Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs 7 (May 2005), *available at https://www.foreignlaborcert.doleta.gov/pdf/policy_nonag_progs.pdf*.
[9] 90 Fed. Reg. 183 at 45989 (Sept. 24, 2025).

The NPRM also minimizes the significance of experience-based wage standards in shaping demand for high-skilled labor in the United States. The weighted lottery proposed under the NPRM is not only designed to prioritize petitions "requiring higher skills and higher skilled aliens" (i.e., those with more experience), it also "incentivizes employers to offer higher wages to all petitioners," something only achievable under the NPRM by offering experience-derived OEWS wages above the "occupational requirements" of the labor market. In short, the NPRM is designed to create a quasi-voluntary wage floor for all H-1B petitions regardless of the "tasks, knowledge, skills, and specific vocational preparation (education, training, and experience)" of the petitioner.

This raises significant concerns regarding the agency's stated objective of "maintaining the opportunity for employers to secure H-1B workers at all wage levels." The proposed rule demonstrates deficiencies in two key respects. First, it presumes that U.S. employers can remain price competitive with international firms while offering senior-level compensation to entry- and mid-career employees, without imposing equivalent restrictions on foreign competitors operating in markets with lower labor costs.

Second, even if a U.S. employer were to provide senior-level wages to senior career professionals for an entry-level position, the NPRM's rationale is based on the unsupported assumption that highly skilled professionals would willingly accept roles below their qualifications, resulting in career stagnation. These assumptions are neither corroborated by current market conditions nor supported by credible evidence, and the agency fails to address these foundational issues within the NPRM.

To illustrate how the proposed system could work in practice within the context of U.S. military recruitment, the intended effect would be an increase in the number of generals, ostensibly to raise wages for all lower-ranking personnel. In practice, however, this would simply elevate the average military wage on paper due to an inflated number of higher-compensated officers, rather than producing actual compensation benefits for lower ranks. The result would be an unsustainable oversupply of generals, not tangible wage growth for the individual soldiers serving under them.

Another consequence would be the rapid depletion of lower-ranking personnel, leaving critical combat roles undermanned. Should the agency's framework be followed by either assigning generals to perform duties typically reserved for their junior officers or compensating inexperienced new recruits at salary levels commensurate with senior officers, overall payroll costs would balloon to unsustainable levels, likely requiring reductions in funding for vital arms and equipment or increased costs to the American public through higher taxes.

Our nation's defense relies on a full complement of soldiers at every career level. Ensuring that individuals are compensated according to rank and experience is fundamental to maintaining both effective operations and the long-term economic viability of our armed forces. In the

same way, the success of America's innovation economy requires the adequate supply of highly skilled professionals at every career level, and compensation based on experience is vital to sustaining our nation's competitiveness and economic viability.

The NPRM Would Not Prioritize the Highest Wage Among Similarly Experienced Workers

The agency states that it "aims to implement the numerical cap in a way that incentivizes employers to offer higher wages," yet makes no provision for ensuring wages are the highest offered among similarly skilled and experienced workers within the same local market. The OEWS system is designed to identify *average* wages based on the level of skill and experience required for the position within an occupation. Selecting petitions based on an OEWS wage level alone does not take into account variations in salary within each of these levels. Consequently, the NPRM may lead to the prioritization of senior career H-1B candidates without ensuring they reflect a genuine increase in wages compared to the average compensation of similarly skilled and experienced U.S. workers.

As the agency has not provided evidence demonstrating that U.S. employers could maintain international competitiveness by offering Level IV wages to less experienced workers—a notion at odds with prevailing economic conditions and the global demand for STEM professionals—the NPRM is unlikely to incentivize higher wages through voluntary overcompensation of foreign candidates. Instead, it is probable that the NPRM will only produce higher numbers of older professionals earning average salaries, contributing only nominally to the agency's stated goal of meaningful wage growth.

In conclusion, we submit that DHS has not adequately quantified and considered the economic distortions of this proposal, including potential disparate impacts on the economies of different geographic areas. DHS also has not demonstrated that it has considered and ruled out alternative methods to accomplish its goals, as is required by the Administrative Procedure Act (APA). The only other means DHS appears to have considered is the "ranking" model the agency pursued in 2020, which would have had even more drastic impacts on early-career talent, and was vacated in court and later withdrawn.

We would welcome the opportunity to work with Congress and the administration on alternative ways to ensure the most effective prioritization and/or allocation of H-1B visas. Indeed, lawmakers have considered and proposed other factors to be considered in a prioritization model (e.g., establishing a preference for individuals with degrees from U.S. institutions, those with in-demand STEM degrees, or those whose employers have invested in their development and have only one more chance to sponsor them for H-1B status)[10] and we look forward to the opportunity to share the practical impacts of any proposed changes.

[10] *See, e.g.,* H-1B and L-1 Visa Reform Act of 2025, S.2928, 119th Cong. § 104 (2025).

The Proposed Process Would Unduly Disadvantage Early-Career Professionals

The H-1B nonimmigrant visa classification is currently the primary employment-based immigration pathway by which a foreign graduate of a U.S. college or university may remain in the United States after F-1 Optional Practical Training (OPT) and pursue a career here. A FWD.us research study found that "more than three-quarters of prospective international students want to stay and work in the U.S. after graduation, including 77% of students pursuing STEM and business degrees."[11] International students currently make up nearly half of all candidates in STEM advanced degree programs in the United States.[12]

These students make vital contributions to the U.S. economy as a whole and specifically, the STEM talent pipeline and the U.S. research enterprise, which is a cornerstone of America's leadership in STEM-related industries, and typically command high salaries when they begin post-graduation employment. It is critical to ensure they would not be disadvantaged simply because they begin their careers at an "entry level" or "qualified" level under the OEWS wage level mapping.

Compete America believes that this NPRM, on its own and when considered in combination with other policy changes and regulations in development, would cause fewer international students to choose to pursue their studies here.[13] This would lead to a decrease in the number of qualified STEM professionals available in the United States – and in turn, an increase in U.S.-trained STEM graduates seeking employment opportunities in other countries that compete with the United States, ultimately weakening our country's position in the global STEM talent market. Meanwhile, competitor countries that recognize the value of attracting these highly sought-after professionals are strengthening their analogous programs.[14]

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[11] *What is OPT? Optional Practical Training Policy Brief*, FWD.us (Oct. 30, 2024), available at https://www.fwd.us/news/what-is-opt/.

[12] *See* Julie Heng, Yutong Deng, *Innovation Lightbulb: Not Just Attracting But Retaining International STEM Students*, Center for Strategic and International Studies (CSIS) (April 11, 2025), available at https://www.csis.org/analysis/innovation-lightbulb-not-just-attracting-retaining-international-stem-students; *International Students and Graduates in the United States: 5 Things to Know*, FWD.us (May 23, 2025), available at https://www.fwd.us/news/international-students/.

[13] *See* Compete America comment on "Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media," available at https://www.regulations.gov/comment/ICEB-2025-0001-21039; Michael A. Clemens, Jeremy Neufeld, Amy M. Nice, *Brain Freeze: How International Student Exclusion Will Shape the STEM Workforce and Economic Growth in the United States*, Institute for Progress (Sept. 28, 2025), available at https://ifp.org/wp-content/uploads/Clemens-Neufeld-Nice-9-28-25.pdf; Nick Niedzwiadek, Alice Miranda Ollstein, Simon J. Levien, *Trump's new $100K visa fee could pummel red state hospitals*, Politico (Oct. 2, 2025), available at https://www.politico.com/news/2025/10/02/trump-h1b-visa-fee-hospitals-doctors-red-states-00592194.

[14] See, e.g., Eduardo Batista, China's new K visa beckons foreign tech talent as US hikes H-1B fee, Reuters (Sept. 29, 2025), https://www.reuters.com/sustainability/sustainable-finance-reporting/chinas-new-k-visa-beckons-foreign-tech-talent-us-hikes-h-1b-fee-2025-09-29/; *Between and Beyond – Shifting International Student Preferences in 2025*, Keystone Higher Education News, Keystone Education Group (July 28, 2025), https://www.keg.com/news/student-search-is-shifting-between-and-beyond-the-usa-and-uk; *Student sentiment shifts as the U.S.' policy uncertainty grows*, IDP (June 16, 2025), https://partners.idp.com/usa/articles/education-sector-news/student-sentiment-shifts-as-the-u-s-policy-uncertainty-grows.

CONCLUSION

Compete America appreciates the agency's consideration of the above feedback. We urge DHS to withdraw the rule, as it is outside the agency's authority under the INA. We encourage the agency to consider all input it receives in connection with this rulemaking in determining its actions going forward on high-skilled immigration.

We look forward to continued engagement with the agency and will continue working with Congress and the administration to advocate for reforms to the U.S. immigration system.

Respectfully submitted,

Scott Corley
Executive Director
Compete America Coalition