

October 24, 2025

*Submitted via Regulations.gov*

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

Re: **Notice of Proposed Rule Making Establishing a Weighted Selection Process  
for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions**  
DHS Docket No. USCIS-2025-0040  
RIN 1615-AD01

Dear Office of Policy & Strategy,

We appreciate the opportunity to comment on the proposed rule from US Citizenship and Immigration Services (USCIS) establishing a Wage Level Lottery for cap-subject H-1B petitions.

As a multi-sector group of national, state, and local organizations across science, business, education, and research and policy we are united in sharing grave concerns about the rule's likely impact on U.S. scientific and technological leadership. Despite our different sectors and missions, we share a common belief that the proposed rule would weaken U.S. competitiveness, set back U.S. science and technology, and fail to achieve the goals the agency states in the published NPRM explanation.

**Wage Levels are inadequate to compare workers across the many occupations that qualify for H-1B status.**

Prevailing Wage Levels exist for a single purpose: to ensure that, within a given occupation and area of intended employment, employers pay H-1B workers fairly, relative to similarly employed U.S. workers. That is how Congress and DOL designed the system: DOL certifies wage levels to ensure wage parity within an occupation and within a local labor market, not to stack-rank different workers. Treating Wage Levels as a proxy for skill or a proxy for compensation is a category error. The Immigration and Nationality Act (INA), Department of Labor regulations, and official guidance all make clear that Wage Levels reflect seniority within a job classification, but not whether one worker or one job is "higher skill" than another.

The INA expressly requires employers to pay the higher of the employer's actual wage or "the prevailing wage level for the occupational classification in the area of employment." The prevailing Wage Level is required to include at least four levels "commensurate with experience, education, and the level of supervision," which is a within-occupation seniority comparison, not a cross-occupation ranking. DOL has operationalized this statutory requirement with level definitions (Level I entry; Level IV fully competent) inside the chosen detailed occupation SOC code and geography. In short: wage levels are a



compliance construct to benchmark within an occupation and location; they are not designed to, and cannot, compare wages across the many occupations that qualify for H-1B status.

While we agree with USCIS that salary can often proxy for skill in a broad sense, (p. 45990 of the NPRM), it does not follow that Wage Levels, which are defined relative to occupation and area, are a reasonable proxy for comparing compensation *across* occupations. The OEWS system that underlies most prevailing-wage determinations was built to produce occupation-by-area wage estimates, not to create an economy-wide skill ladder.

USCIS's own preamble underscores the distinction. The NPRM asserts that "salary generally is a reasonable proxy for skill level." But that premise does not establish that Wage Level weighting can validly be used to compare or prioritize across occupations. A selection system keyed to Wage Levels therefore risks rewarding seniority within lower-paid occupations over genuinely high-wage, high-skill roles in other fields.

This leap from a framework meant to compare workers *within* an occupation to a tool to prioritize workers *across* occupations is not supported by the underlying statute (INA §212(p)), DOL regulations (20 C.F.R. §655.731), or the agency's guidance (last updated in 2009)—and, as discussed below, is not borne out by the government's own data.

### **Wage Levels do not advance USCIS's own goals**

USCIS says that the Department "prefers that cap-subject H-1B visas be allocated in a manner that favors beneficiaries earning the highest wages." Throughout the NPRM, it says that the H-1B program should be used by US employers to recruit beneficiaries for positions requiring the highest level of skill or earning the highest wages (eg, pp. 45990, 46011 of the NPRM). However, the proposal to use Wage Levels would not advance these goals. The reality is that the ranking system proposed would favor companies sponsoring older workers with longer seniority, instead of early career professionals like former postdocs and postdocs researching outside of academia, Masters and above grads from US schools, and research founders performing highly complex duties. Under the proposed rule, the preference for longer seniority would control even in lower-skill jobs, and over genuinely high-wage, high-skill roles.

USCIS is correct that DHS data show a correlation between higher salaries and higher skill and wage levels, but this is a very weak correlation that obscures a huge amount of variation. The wage distribution across Wage Levels shows that there is an enormous amount of overlap in the salaries paid by cap-subject employers across different Wage Levels.<sup>1</sup> All told, from FY2021-2024, variation in the Wage Levels at which I-129 petitions were approved for H-1B status explains no more than 22% of the variation in actual salaries.

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<sup>1</sup> Jeremy Neufeld, "[The 'Wage Level' Mirage](#)," Institute for Progress, September 25, 2025. See the H-1B Salary Distribution by Wage Level bar graph, that shows extensive wage overlap across levels.



A Wage Level IV job is not necessarily a high-wage job. In fact, the data show many Level IV positions reflect salaries far below the median American wage, while some Level II jobs are among the best-paid in the economy.

### **Wage Levels threaten a key pipeline for top talent**

American colleges and universities are the on-ramp for much of the skilled talent that fuels our research labs, startups, and innovation clusters.<sup>2</sup> About half of all college graduates in the United States who were born abroad said that they originally came to the United States because of education opportunities.<sup>3</sup> Each year, tens of thousands of international graduates, particularly in STEM fields, seek to move from F-1 student status into H-1B employment. Retaining this talent is essential if the U.S. is to continue leading in science and technology, as the president himself has said.

The proposed Wage Level Lottery would undercut this pipeline. Recent graduates are necessarily early-career, so their positions are overwhelmingly certified at Level I or II—even when their salaries are six-figure offers in cutting-edge industries. DHS data confirm this mismatch: international students transitioning from F-1 to H-1B status earned higher salaries on average than non-F-1 workers, yet they were far more likely to be certified at the lowest wage levels. Under the proposed rule, that misclassification translates into a 7% reduction in H-1Bs awarded to U.S.-educated international students each year.<sup>4</sup>

In short, the proposal would discourage precisely the kind of high-skill talent retention that Congress and USCIS identify as core goals of the H-1B program. In 2024, a National Academies report concluded that the main global talent pipeline for the United States is talent attracted to U.S. institutions of higher education.<sup>5</sup> “The U.S. has a talent program,” the National Academies committee chair said, “It’s called graduate school.”<sup>6</sup> The proposed approach risks undermining that talent program.

### **Conclusion**

The undersigned recognize the importance of the U.S. Government vigorously enforcing immigration law and protecting the integrity of the H-1B visa category. We share the goal of ensuring that the program continues to attract and retain the world’s most talented workers while protecting U.S. workers from unfair competition. However, this NPRM does not serve those ends.

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<sup>2</sup> Stephan, P., G. Scellato, and C. Franzoni. 2015. [International competition for PhDs and postdoctoral scholars: What does \(and does not\) matter](#). *Innovation Policy and the Economy* 15(1): 73–113.

<sup>3</sup> NCSES. 2021a. [National Survey of College Graduates](#). Alexandria, VA: National Science Foundation.

<sup>4</sup> Jeremy Neufeld, “[The ‘Wage Level’ Mirage](#),” Institute for Progress, September 25, 2025.

<sup>5</sup> National Academies of Sciences, Engineering, and Medicine. 2024. [International Talent Programs in the Changing Global Environment](#). Washington, DC: The National Academies Press.

<sup>6</sup> Karin Fischer, “[To remain scientifically competitive, the U.S. must take a coordinated national approach](#),” *Chronicle of Higher Education*, September 4, 2024.



Imposing a Wage Level Lottery would misapply a tool designed for compliance into a crude cross-occupation ranking system, producing outcomes that contradict Congress's intent and USCIS's stated goals. Rather than rewarding genuinely high-wage, high-skill roles, the rule would privilege seniority in lower-wage occupations and shut out early-career STEM talent trained at U.S. universities. These distortions would weaken U.S. competitiveness, diminish the return on our nation's investments in higher education, and undermine the very innovation pipeline that has kept America at the forefront of science and technology.

For these reasons, we respectfully urge USCIS to withdraw the proposed rule.

Respectfully filed,

**SCIENCE ORGANIZATIONS**

American Anthropological Association  
American Association for Dental, Oral, and  
Craniofacial Research  
American Association of Physicists in Medicine  
American Physical Society  
American Society of Biomechanics  
Association for Psychological Science  
Biophysical Society  
Ecological Society of America

**RESEARCH AND POLICY ORGANIZATIONS**

Alliance of Business Immigration Lawyers  
American Immigration Council  
Center for Strategy & Applied Insights at Fragomen  
Economic Innovation Group  
FWD.us  
Global Detroit  
Institute for Progress

**BUSINESS ORGANIZATIONS**

Additive AI  
Brennan Group LLC  
Center for American Entrepreneurship  
Compete America Coalition  
Northern Michigan Chamber Alliance  
Traverse Connect

**EDUCATION ORGANIZATIONS**

American Association of Physics  
Teachers  
Association of Public and Land-grant  
Universities  
Catholic University of America  
Cornell Postdoctoral Association  
Flint & Genesee Education and Talent  
Grinnell College  
International Student & Scholar Services  
at University of Maryland  
MIT Graduate Student Council  
Middle States Commission on Higher  
Education  
NAFSA: Association of International  
Educators  
NASPA-Student Affairs Administrators in  
Higher Education  
National Postdoctoral Association  
Northern Illinois University  
Oregon State University  
Presidents' Alliance on Higher Education  
and Immigration  
Santa Rosa Junior College  
Shorelight, LLC