

National Foundation for American Policy

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New Research: DOL Proposed Rule To Hike H-1B Wages Up To 33% Is Likely Unlawful

Private Wage Survey Data Show Current Prevailing Wage Levels Reflect Market Rates

Arlington, Va. – A Department of Labor proposed rule violates U.S. immigration law by requiring employers to pay H-1B visa holders and employment-based immigrants far above the levels stipulated by the statute, according to a National Foundation for American Policy (NFAP) [analysis](#). DOL’s apparent goal with the proposed rule is to price high-skilled foreign nationals out of the U.S. labor market. That is similar in intent to the administration’s \$100,000 fee imposed on the entry of new H-1B visa holders. Under the law, employers must pay H-1B visa holders the higher of the prevailing wage or the actual wage offered to similar U.S. workers. Requiring employers to pay many H-1B visa holders and employment-based immigrants, on average, up to 33% more than the salary of similarly qualified U.S. workers violates the law. The Supreme Court has ruled that federal agencies are not allowed unlimited deference in interpreting statutes.

The proposed rule was published in March and comments needed to be received on or before May 26. A final version of the rule could go into effect before the next H-1B electronic registration period in March 2027.

The National Foundation for American Policy is a nonpartisan public policy research organization based in Arlington, Virginia. The study “An Analysis of DOL’s Proposed Rule on Prevailing Wage” can be found at <https://nfap.com/>.

NFAP examined private wage survey data, the best indicator of market wages, and discovered that the current prevailing wage system is remarkably accurate. NFAP found an average wage difference of only 1% between the current DOL prevailing wage system and Willis Towers Watson (WTW) private wage surveys for a sample of major H-1B occupations in large metropolitan areas for entry-level positions. NFAP compared the current DOL Level I and WTW’s comparable level, P1, for 55 city-occupation combinations in frequently sponsored categories, such as software developer and computer system analyst, in 10 major metro areas, including New York, Chicago and Los Angeles. WTW (Willis Towers Watson) is a company that provides salary surveys and analysis for private employers worldwide. Employers use private wage surveys for day-to-day salary decisions for employees and for immigration compliance. DOL accepts private wage surveys when companies apply for H-1B visa holders and employment-based immigrants.

To justify increasing prevailing wage levels, DOL officials contrived or reverse-engineered a salary “gap” by comparing H-1B applicants, mostly early-career professionals, to all U.S. workers in the same occupations, who have more experience, greater job tenure and have reported income, such as bonuses and second jobs, that cannot be included when employers submit salary information for foreign nationals on H-1B applications. In drafting the proposed rule, DOL officials adopted a premise and methodology that indicates they were determined to find a way to significantly raise the required salaries of H-1B visa holders. In sum, DOL first invented or contrived a ‘gap’ between the wages of H-1B visa holders and the wages of average U.S. workers in the same areas and

occupations, and then chose numbers or percentiles to eliminate the gap. Legitimate research shows that, on average, H-1B visa holders are paid more than comparable U.S. workers with the same levels of experience and qualifications.

According to Mark Regets, a labor economist and senior fellow at the National Foundation for American Policy, DOL is not making a valid comparison. “DOL has invented a gap and then selected percentiles to eliminate the average gap,” he said. “That’s bad because it is not a real gap and it produces a required wage requirement well above DOL’s definition of a prevailing wage.”

As part of an apparent effort to restrict employment-based immigration, Trump officials altered the formula used to compute the required minimum wage for permanent residence and temporary visas in the proposed rule. As a result, the DOL proposed rule would increase the required salary for H-1B visa holders and employment-based immigrants by an average of 33% for Level I, according to DOL. It would also increase the required prevailing wage by an average of 24% for Level II, 21% for Level III and 22% for Level IV.

An employer in San Francisco applying for a software developer would see the required prevailing wage for Level I rise from the current \$135,699 to \$181,009 (+\$45,310) and for Level IV from \$213,512 to \$259,801 (+\$46,289), based on average percentage changes for each level reported by DOL in its proposed rule. An employer in Boston would pay almost \$36,000 more for a software developer at Level I and \$38,619 more at Level IV under the proposed rule than the current prevailing wage system.

The Supreme Court’s [decision](#) to end Chevron deference to federal agencies could affect whether the Labor Department is allowed to compel employers to pay high-skilled foreign nationals well above the law’s requirements. In June 2024, the U.S. Supreme Court ruled in *Loper Bright Enterprises et al. v. Raimondo*: “The Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous; Chevron is overruled.”

About the National Foundation for American Policy

Established in 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) nonprofit, nonpartisan public policy research organization based in Arlington, Virginia, focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Cornell Law School professor Stephen W. Yale-Loehr and former INS Commissioner James W. Ziglar. Over the past 24 months, NFAP’s research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post* and other major media outlets. The organization’s reports are available at www.nfap.com. X.com: [@NFAPResearch](#) Bluesky: [@NFAPResearch.bsky.social](#)

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