May 25, 2026

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Employment and Training Administration
Department of Labor
200 Constitution Avenue NW, Room N-5311
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Re: Comment on a Proposed Rule by the Employment and Training Administration, Department of Labor, on 03/27/2026, "Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States," 20 CFR Parts 655 and 656, DOL Docket No. ETA-2026-0001, RIN 1205-AC30. Submitted online via www.regulations.gov.

On behalf of the National Foundation for American Policy (NFAP), a nonpartisan policy research organization, I submit this comment to provide information on the proposed rule by the Employment and Training Administration, Department of Labor, on 03/27/2026, "Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States," ETA-2026-0001. The comments are taken from the text (minus the Appendix) of **NFAP Policy Brief:** An Analysis of DOL's Proposed Rule on Prevailing Wage, May 25 2026, published by the National Foundation for American Policy.

AN ANALYSIS OF DOL'S PROPOSED RULE ON PREVAILING WAGE

EXECUTIVE SUMMARY

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.

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.

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."[1]

A Proposed Rule That Violates U.S. Immigration Law

On March 27, 2026, the Department of Labor published a proposed rule that violates U.S. immigration law by requiring employers to pay H-1B visa holders and employment-based immigrants up to 33% more, on average, than the salary for similarly qualified U.S. workers.[2] The law does not state that H-1B visa holders and employment-based immigrants should be paid 33% more (at Level I) than comparable U.S. workers. Congress could have required employers to pay a wage premium for foreign nationals, but did not.

The Immigration and Nationality Act states: "No alien may be admitted or provided status as an H–1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following: (A) The employer- (i) *is offering and will offer during the period of authorized employment to aliens admitted or provided status as an H–1B nonimmigrant wages that are at least*- (I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or (II) the *prevailing wage level for the occupational classification in the area of employment*."[3] (Emphasis added.) Separately, the law discusses the four wage levels for prevailing wage but does not require employers to pay a wage premium for foreign nationals.[4]

When granting DOL a role in the H-1B process, Congress did not anticipate that the Department of Labor would distort the term prevailing wage beyond its conventional meaning. Currently, according to the Department of Labor, "The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment."[5]

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[1] https://www.supremecourt.gov/opinions/23pdf/22-451_7m58.pdf.
[2] A Proposed Rule by the Employment and Training Administration, Department of Labor, on 03/27/2026, "Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States," ETA-2026-0001. https://www.federalregister.gov/documents/2026/03/27/2026-06017/improving-wage-protections-for-the-temporary-and-permanent-employment-of-certain-foreign-nationals.
[3] Section 212(n)(1) of the Immigration and Nationality Act.
[4] Section 212(p)(4) codifies the four levels. "Where 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."
[5] https://www.dol.gov/agencies/eta/foreign-labor/wages/prevailing-wage.

Table 1
Current and Proposed Wage Levels

Wage Level	CURRENT	PROPOSED RULE
LEVEL I	17th percentile	34th percentile
LEVEL II	34th percentile	52nd percentile
LEVEL III	50th percentile	70th percentile
LEVEL IV	67th percentile	88th percentile

Source: Department of Labor.

Under the current system, DOL determines the prevailing wage by gathering data from the government's Occupational Employment and Wage Statistics (OEWS) survey and applying a mathematical formula to produce four wage levels for each occupation. Under the DOL definitions, the four levels are: Level I "entry level," Level II "qualified," Level III "experienced," and Level IV "fully competent." The underlying data are based on broad pay band information.

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 follows: Level 1: 34th percentile (instead of the current 17th percentile), Level 2: 52nd percentile (instead of the current 34th percentile), Level 3: 70th percentile (instead of 50th percentile) and Level 4: 88th percentile (instead of 67th percentile).[6] This is similar to a 2021 Trump administration final rule that did not go into effect.

Table 2
Proposed Rule's Percentage Wage Increase

Wage Level	Proposed Rule's Percentage Wage Increase Compared to Current Regulation
I	33.39%
II	24.47%
III	20.79%
IV	21.68%

Source: Department of Labor.

According to DOL, the proposed rule, on average, will increase the required wage employers must pay for an H-1B visa holder by 33% at Level I, 24% at Level II, 21% at Level III and 22% at Level IV. Based on NFAP's analysis, the proposed rule would have an impact on wages similar to the January 2021 final rule,

[6] See "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States," Department of Labor, Employment and Training Administration, 20 CFR Parts 655 and 656, [DOL Docket No. ETA–2020–0006] RIN 1205–AC00, January 14, 2021. https://www.federalregister.gov/documents/2021/01/14/2021-00218/strengthening-wage-protections-for-the-temporary-and-permanent-employment-of-certain-aliens-in-the.

which did not go into effect. The percentiles chosen for the wage levels in the proposed rule are nearly identical to those in the January 2021 final rule.

NFAP compared the current prevailing wage for almost 600 occupations and metro area combinations to the wages required under the proposed rule. (See the Appendix for the complete list.) The projections for the new required prevailing wage are based on the average increase across all occupations for the required wage reported by DOL in its proposed rule. The required percentage increase will likely be higher in occupations where employers are willing to pay a higher premium for additional skill.

Table 3
San Francisco—Software Developer: Comparison of Required Prevailing Wage for Current System vs. Proposed Rule

Level	Metro Area/Occupation	Current Required Prevailing Wage	Estimated Proposed Rule's Required Prevailing Wage	Estimated Required Increase Over Currently Required Prevailing Wage
I	**San Francisco, Software Developer**	$135,699	$181,009	+$45,310
II	**San Francisco, Software Developer**	$161,637	$201,189	+$39,553
III	**San Francisco, Software Developer**	$187,574	$226,571	+$38,997
IV	**San Francisco, Software Developer**	$213,512	$259,801	+$46,289

Source: Department of Labor, National Foundation for American Policy. Note: The projections of the new required prevailing wage are based on the average increase across all occupations for the required wage reported by DOL in its proposed rule. The required percentage increase will likely be higher in occupations where employers are willing to pay a higher premium for additional skill.

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 the 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.

An employer in San Jose applying for an electrical engineer would see the required prevailing wage for Level I rise from the current $131,019 to $174,767, and for Level IV from $217,630 to $264,813, based on the average percentage changes for each level reported by DOL in its proposed rule.

Table 4
San Jose—Electrical Engineer: Comparison of Required Prevailing Wage for Current System vs. Proposed Rule

Level	Metro Area/Occupation	Current Required Prevailing Wage	Estimated Proposed Rule's Required Prevailing Wage	Estimated Required Increase Over Currently Required Prevailing Wage
I	**San Jose, Electrical Engineer**	$131,019	$174,767	+$43,747
II	**San Jose, Electrical Engineer**	$159,890	$199,015	+$39,125
III	**San Jose, Electrical Engineer**	$188,760	$228,003	+$39,243
IV	**San Jose, Electrical Engineer**	$217,630	$264,813	+$47,182

Source: Department of Labor, National Foundation for American Policy. Note: The projections of the new required prevailing wage are based on the average increase across all occupations for the required wage reported by DOL in its proposed rule. The required percentage increase will likely be higher in occupations where employers are willing to pay a higher premium for additional skill.

Attorneys have raised significant issues with the proposed rule, "A significant concern with the proposed wage rule is that it would force employers to either increase their pay scale to well above market and what current economic conditions allow or leave critical positions unfilled because they are unable to tap into the high-skilled foreign national workers they need to supplement their U.S. workforce," said Kevin Miner of Fragomen.[7]

An Immigration Rule With A Questionable Premise and Methodology

The DOL proposed rule adopts a premise and methodology that indicate government officials were determined to find a way to significantly raise the required salaries of H-1B visa holders. Among the most important problems with the proposed rule: To achieve its apparent goal of producing a higher required wage, DOL invented or contrived a 'gap' between the wages of H-1B visa holders and average U.S. workers in the same areas and occupations and chose numbers or percentiles to eliminate the gap.

To justify significantly raising the prevailing wage, DOL alleges a large wage gap exists between H-1B visa holders and comparable U.S. professionals, but does not cite any legitimate research to support the allegation. A recent study by George Mason University economics professor Michael Clemens found H-1B

[7] Stuart Anderson, "New Immigration Rule Raises Required H-1B Visa And Immigrant Salaries," *Forbes*, March 27, 2026.

visa holders earn salaries up to 6% higher than comparable U.S. professionals.[8] Similarly, an examination of the skills and compensation of over 50,000 IT professionals in the United States by University of Maryland researchers Sunil Mithas and Henry C. Lucas, Jr. concluded, "[C]ontrary to popular belief, non-U.S. citizen IT professionals are not paid less compared to American IT professionals."[9] An analysis by Glassdoor found, "Across the 10 cities and roughly 100 jobs we examined, salaries for foreign H-1B workers are about 2.8% higher than comparable U.S. salaries on Glassdoor."[10] The Government Accountability Office found that in electrical/electronics engineering occupations (age group 20-39), the median salary for an engineer in H-1B status was $5,000 higher than for a U.S. engineer.[11]

There are several reasons why DOL's wage "gap" promoted in the proposed rule is not valid and appears contrived to justify a predetermined objective of raising required H-1B salaries.

First, DOL claims there is a wage gap by making an odd calculation using data from Labor Condition Application files, known as LCAs, and the BLS Occupational Employment and Wage Survey, or OEWS. For each occupation, state and year, *DOL calculates an average salary for H-1Bs* (using LCA data) and *all workers* (using OEWS). The average difference between these two numbers is $10,191, *which is the amount DOL asserts H-1B visa holders are paid less.*

However, "all workers" in the DOL calculation include individuals with far more experience than most H-1B applicants, and DOL's "all workers" category also includes bonuses, second jobs and other compensation that cannot be used when employers submit H-1B applications.

According to Mark Regets, a labor economist and senior fellow at the National Foundation for American Policy, DOL is not making a valid comparison. "The wage measures are not comparable, and the workers are not comparable."[12]

He considers it "nonsensical" that the goal of the proposed rule is to equalize the average salary between people being newly hired on H-1B visas and individuals with significantly more experience.

DOL's analysis compares all H-1Bs to all workers regardless of experience levels, even though many H-1Bs are early in their careers.

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[8] Michael A. Clemens (2026): *Immigrant-Native Wage Gaps and Immigration Tariffs: Examining the Case for an H-1B Visa Tax*, RFBerlin Discussion Paper No. 072/26.
[9] Stuart Anderson, "Trump Immigration Restrictions Spur New Look At H-1B Salaries," *Forbes*, March 18, 2026.
[10] Ibid.
[11] Ibid.
[12] Stuart Anderson, "New Immigration Rule Raises Required H-1B Visa And Immigrant Salaries."

DOL concedes in its proposed rule that the "majority" of H-1B applicants are at Levels I and II, meaning they have little experience and differ from the average U.S. worker. The four DOL wage levels primarily consider an individual's current level of experience, not their talent or potential contributions. For example, DOL lists employees at Level IV, the highest level, as people who "generally have management and/or supervisory responsibilities." Individuals at Level I and II are new or relatively new to the labor market.

There is a second type of error in the agency's comparison. DOL also does not account for the difference in tenure at an existing company between H-1B visa holders and the average U.S. worker. Economist Michael Clemens notes in his recent study that "*comparable U.S. natives have over six years of tenure on average, and commensurately higher wages for this reason alone* . . . but almost no new H-1B employees have such tenure at the sponsoring firm."[13]

Evidence for the importance of time working for an employer can be found in USCIS reports on the salaries actually paid to H-1B visa holders.[14] The mean salary listed for H-1B workers on petitions for continuing employment is $147,000—25% more than the $188,000 reported on petitions for initial employment.

There is a third category of error in the proposed rule's comparison. Under the law, employers pay H-1B visa holders the higher of the prevailing wage or the actual wage offered to similarly qualified U.S. workers. In other words, the prevailing wage listed on the Labor Condition Application is the *minimum* employers must pay. The offered wage is typically higher. According to data DOL provides in Exhibit 5 of the proposed rule, employers pay H-1B visa holders an *offered wage* between $9,328 and $18,605 (or 10.6% to 12.7%) *higher* than the prevailing wage listed on the Labor Condition Application.

"The H-1B wage data DOL uses is not the actual wage people are paid, and the data are overrepresented by early-career professionals and inappropriately compared to all workers in an occupation," said Regets.

"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."

DOL concedes that H-1B visa holders are paid much higher salaries than what is listed on the Labor Condition Application. The prevailing wage estimate is a legal minimum. The Federal Register notice for the rule shows that many employers offer a higher wage on the Labor Condition Application: an average of

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[13] Michael A. Clemens (2026): *Immigrant-Native Wage Gaps and Immigration Tariffs: Examining the Case for an H-1B Visa Tax*. Emphasis added.
[14] *Characteristics of H-1B Specialty Occupation Workers*, USCIS, April 24, 2026, Tables 5b and 5c https://www.uscis.gov/sites/default/files/document/data/fy25_h1b_characteristics_congress_signed_04242026.pdf.

12.7% more than is required at Level I, and 12.9% more at Level IV.[15] In most cases, LCAs are filed before salary negotiations with specific employers, so actual initial salaries may be higher.

“The H-1B wage data DOL uses is not the actual wage people are paid, and the data are overrepresented by early-career professionals and inappropriately compared to all workers in an occupation,” said Regets. “In addition, the DOL data used contains performance bonuses that are not included on the LCA. A proper analysis requires that the same data be used for both H-1B and comparable native workers. Most analyses using such data have found H-1B workers paid a small premium over other workers.”[16]

“The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment,” according to the Department of Labor. However, the DOL proposed rule does not meet that definition but instead establishes a new standard well above the prevailing wage after creating an artificial goal: equalizing the average salary between newly hired H-1B visa holders and individuals with significantly more experience.

Private Wage Surveys Show Current DOL Prevailing Wage is Accurate

Private wage surveys, which employers use for day-to-day salary decisions for employees as well as immigration compliance, are the best indicators of market wages. DOL accepts private wage surveys when companies apply for H-1B visa holders and employment-based immigrants. The surveys are not available in all locations and occupations. Employers and attorneys hope DOL will continue to allow the use of private wage surveys as part of the immigration process for highly skilled workers, but DOL stated in the proposed rule that it would consider comments to restrict their use.

NFAP examined private wage survey data 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) provides salary surveys and analysis for private employers worldwide. NFAP used Level I because that had the most available data points for comparison. In New York, there is little difference between the current DOL wage system for Level I and the private wage survey from WTW for P1 for accountants/auditors, computer system analysts and operations research

[15] Exhibit 5 in the proposed rule.
[16] Additional analysis provided by Mark Regets.

analysts, i.e., they are within 2.2% to 3.6% of each other. In New York, the current DOL wage system Level I is 7.9% higher than WTW for P1 for a financial analyst, 11.4% higher for a data scientist and 12.5% higher for a software developer.

Table 5
Comparing Current Prevailing Wage to Private Wage Surveys – New York

Metro Area	Occupation	Current DOL Prevailing Wage Level I (OEWS)	Private Wage Survey (WTW – P1)	Percentage Difference Between Current DOL Prevailing Wage Level I and Private Wage Survey P1
New York	**Accountants/Auditors**	$73,070	$75,000	-2.6%
New York	**Computer System Analyst**	$80,600	$77,697	+3.6%
New York	**Data Scientist**	$79,456	$ 70,403	+11.4%
New York	**Financial Analyst**	$87,838	$ 80,888	+7.9%
New York	**Operations Research Analyst**	$68,869	$70,403	-2.2%
New York	**Software Developer**	$103,210	$90,342	+12.5%

Source: Department of Labor, WTW (private wage survey), National Foundation for American Policy.

The story is similar in Philadelphia, where the difference between the current DOL wage system for Level I is only 2% or 3% for a financial analyst or operations research analyst. In Philadelphia, the current DOL wage system Level I is 11.5% higher than WTW for P1 for a data scientist and 12% higher than for a software developer.

Table 6
Comparing Current Prevailing Wage to Private Wage Surveys – Philadelphia

Metro Area	Occupation	Current DOL Prevailing Wage Level I (OEWS)	Private Wage Survey (WTW – P1)	Percentage Difference Between Current DOL Prevailing Wage Level I and Private Wage Survey P1
Philadelphia	**Accountants/Auditors**	$61,464	$64,848	-5.5%
Philadelphia	**Data Scientist**	$73,944	$65,474	+11.5%
Philadelphia	**Financial Analyst**	$70,512	$72,770	-3.2%
Philadelphia	**Operations Research Analyst**	$64,064	$65,474	-2.2%
Philadelphia	**Software Developer**	$88,088	$77,523	+12.0%

Source: Department of Labor, WTW (private wage survey), National Foundation for American Policy.

CONCLUSION

The accuracy of the current prevailing wage system when compared with private wage surveys indicates that DOL is not solving a problem with its proposed rule but instead is seeking to price high-skilled foreign nationals out of the labor market by significantly raising the required wage. If the current prevailing wage system contained significant flaws and needed serious reform, it would not closely align with the market wage, as reflected in private wage surveys. However, the current prevailing wage system appears to closely match the market wage. In contrast, DOL states in its proposed rule that it will increase the prevailing wage well above the current prevailing wage, on average, by 33% for Level I, 24% for Level II, 21% for Level III and 22% for Level IV.

Sincerely,

[Signature Redacted]

Stuart Anderson
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