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4510-FP-P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

[DOL Docket No. ETA-2026-0001]

RIN 1205-AC30

Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States

AGENCY: Employment and Training Administration, Department of Labor

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Labor (DOL or the Department) is issuing this Notice of Proposed Rulemaking (NPRM) to solicit comments and public input regarding its proposal to revise Employment and Training Administration (ETA) regulations governing the prevailing wages for employment opportunities that United States (U.S.) employers seek to fill with alien workers on a permanent or temporary basis through certain EB-2 and EB-3 employment-based immigrant visas via the Permanent Labor Certification (PERM) program or through H-1B, H-1B1, or E-3 nonimmigrant visas. Specifically, DOL is proposing to amend its regulations governing the PERM program and Labor Condition Applications (LCAs) to incorporate changes to the computation of wage levels under the Department's four-tiered prevailing wage structure based on the Occupational Employment and Wage Statistics (OEWS) wage survey administered by the Department's Bureau of Labor Statistics (BLS). These proposed revisions aim to better align prevailing wage levels with the wages paid to U.S. workers who are similarly employed in the occupation and area of intended employment. The Department's proposed revisions also seek to strengthen program integrity by reducing the incentive for employers to use these programs to replace, rather than supplement, U.S. workers by

employing lower-paid alien workers. In addition, the revision would enable the Department to more effectively ensure that the employment of immigrant and nonimmigrant workers admitted or otherwise provided one of the covered statuses does not adversely affect the wages and working conditions of U.S. workers.

DATES: Interested persons are invited to submit written comments on this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments electronically by the following method: *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions on the website for submitting comments. A plain language summary of the proposed rule is also available on that website.

Instructions: Comments should be confined to issues pertinent to the NPRM, identify the agency's name and public docket number ETA-2026-0001, explain the reasons for any recommended changes, and reference the specific section and wording being addressed, where possible.

Please be advised that the Department will post comments that relate to this NPRM to *https://www.regulations.gov,* including any personal information provided. The *https://www.regulations.gov* website is the Federal e-Rulemaking Portal and all comments posted there are available and accessible to the public. Please do not submit comments containing trade secrets, confidential or proprietary commercial or financial information, personal health information, sensitive personally identifiable information (for example, social security numbers, driver's license or state identification numbers, passport numbers, or financial account numbers), or other information that you do not want to be made available to the public. Should the agency become aware of such information, the agency reserves the right to redact or refrain from posting such personally sensitive or other sensitive information, or comments that contain threatening

language. Please note that depending on how information is submitted, the agency may not be able to redact the information and instead reserves the right to refrain from posting the information or comment in such situations.

FOR FURTHER INFORMATION CONTACT: For further information, contact 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, email: OFLC.Regulations@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Framework

The Immigration and Nationality Act (INA), as amended, assigns responsibilities to the Secretary of Labor (Secretary) relating to the entry and employment of certain categories of immigrants and nonimmigrants.[1] This NPRM concerns the calculation of the prevailing wage levels for job opportunities in the PERM,[2] E-3, H-1B, and H-1B1 programs for which employers seek labor certification from the Secretary.[3] The Department of Labor uses a unified four-tiered prevailing wage methodology based on data obtained from employers under the Occupational Employment and Wage Statistics (OEWS) survey administered by the Department's Bureau of Labor Statistics (BLS) to determine wage levels for certain temporary (H-1B, H-1B1, E-3) and permanent (EB-2 and EB-3) labor certification processes.

1. Overview of Labor Certification and Labor Condition Applications

Labor certifications and labor condition applications are requirements under the INA for certain alien workers seeking employment in the United States. To issue a labor

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[1] There are two general categories of U.S. visas: immigrant and nonimmigrant. Immigrant visas are issued to foreign nationals who intend to live permanently in the United States. Nonimmigrant visas are for foreign nationals who enter the United States on a temporary basis—for tourism, medical treatment, business, temporary work, study, or other reasons.

[2] PERM stands for Permanent Electronic Review Management.

[3] 8 U.S.C. 1101(a)(15)(E)(iii), (H)(i)(b), (H)(i)(b1).

certification, the Secretary of Labor must determine that there are not sufficient able, willing, and qualified workers available at the time of application for a visa and admission into the country and that the hiring of the alien worker will not adversely affect the wages or working conditions of workers in the United States similarly employed.[4] The Department's statutory obligations under the INA are specifically designed to ensure that the introduction of alien labor into the United States supplements, rather than displaces, U.S. workers and that the current prevailing wage structure protects U.S. labor market conditions.[5]

The labor condition application (LCA) is a requirement for the H-1B, H-1B1, and E-3 nonimmigrant visa classifications.[6] To be able to employ an alien as an H-1B, H-1B1, or E-3 nonimmigrant, the employer must have filed with the Secretary of Labor an application that makes a number of critical attestations surrounding wages and working conditions, including that the employer is offering and will offer wages that are at least the actual wage paid by the employer to individuals with similar experience and qualifications or the prevailing wage as determined by the Department, whichever is greater, and will provide working conditions that will not adversely affect the working conditions of U.S. workers similarly employed.[7]

The H-1B, H-1B1, and E-3 programs are temporary nonimmigrant classifications that generally allow U.S. employers to hire alien workers in "specialty occupations," generally defined as those jobs which require the theoretical and practical application of highly specialized knowledge and at least a bachelor's degree or its equivalent.[8] By contrast, the EB-2 and EB-3 programs are permanent immigrant visa categories that

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[4] INA § 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A)(i)–(ii) (labor certification requirement).
[5] See 8 U.S.C. 1182(a)(5)(A)(ii); 20 CFR 656.1(a) (purpose of PERM regulations).
[6] 8 U.S.C. §§ 1182(n), 1182(t). Two subsections titled "(t)" have been enacted. Here, the Department cites to the first, titled "Nonimmigrant professionals; labor attestations."
[7] 8 U.S.C. §§ 1182(n), 1182(t).
[8] INA § 101(a)(15)(E)(iii), (H)(i)(b), (H)(i)(b1), 8 U.S.C. 1101(a)(15)(E)(iii), (H)(i)(b), (H)(i)(b1); INA § 214(i), 8 U.S.C. 1184(i)(1)–(2) (definition of "specialty occupation" and degree requirement).

generally require labor certification before an employer can sponsor an alien worker for lawful permanent residence.[9] These programs, however, are intimately connected. Many alien workers initially enter the U.S. in a temporary H-1B status and later adjust their status to permanent residency through the EB-2 or EB-3 categories using the PERM process. In FY 2024, approximately 57.6 percent of PERM applications were filed on behalf of workers already employed in H-1B status, underscoring the overlap between temporary and permanent programs.

To ensure consistency and prevent wage-setting disparities across these interrelated programs, the Department applies a unified four-tier prevailing wage structure across all the programs based on the BLS OEWS survey. This structure, required by the INA, establishes wage levels which are commensurate with experience, education, and level of supervision and that are implemented through ETA regulations.[10] In FY 2024, the Department certified 502,374 H-1B applications, accounting for the vast majority of temporary labor certifications.[11] By comparison, H-1B1 applications totaled 3,368 and E-3 applications totaled 9,154.[12] For permanent employment, the Department certified 35,505 PERM applications during the same period.[13] These figures highlight the scale of the H-1B program relative to other visa classifications and underscore the importance of consistent wage protections across temporary and permanent programs.

Among all LCAs certified in FY 2024, 19 percent were assigned to Wage Level I, 44 percent to Level II, 21 percent to Level III, and 16 percent to Level IV.[14] These levels

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[9] INA § 203(b)(2)–(3), 8 U.S.C. 1153(b)(2)–(3) (EB-2 and EB-3 classifications); INA § 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A) (labor certification requirement); 20 CFR part 656 (PERM regulations).
[10] INA § 212(p)(4), 8 U.S.C. 1182(p)(4) (requiring four wage levels commensurate with experience, education, and supervision); *see also* 20 CFR 656.40(b)(2) and 655.731(a)(2)(ii) (prevailing wage methodology).
[11] Office of Foreign Labor Certification, FY 2024 LCA data: available at https://www.dol.gov/agencies/eta/foreign-labor/performance.
[12] Id.
[13] Office of Foreign Labor Certification, FY 2024 PERM data: available at https://www.dol.gov/agencies/eta/foreign-labor/performance.
[14] Office of Foreign Labor Certification, FY 2024 LCA data: available at https://www.dol.gov/agencies/eta/foreign-labor/performance.

reflect the Department's four-tier structure, which differentiates wages based on the education, experience, and level of supervision required for the position: Level I corresponds to entry-level roles, while Level IV represents the most experienced and highly skilled positions.[15]

2. Permanent Labor Certification

The INA prohibits the admission of certain employment-based immigrants unless the Secretary of Labor has determined and certified to the Secretary of State and the Secretary of Homeland Security that (1) there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and (2) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.[16]

This "labor certification" requirement does not apply to all employment-based immigrants. The INA provides for five "preference" categories, or immigrant visa classes, only two of which—the second and third preference employment categories (commonly called the EB-2 and EB-3 immigrant visa classifications)—generally require a labor certification.[17] An employer seeking to sponsor an alien worker for an immigrant

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[15] See INA § 212(p)(4), 8 U.S.C. 1182(p)(4) (requiring four wage levels commensurate with experience, education, and supervision); 20 CFR 655.731(a)(2)(ii) and 656.40(b)(2) (prevailing wage methodology).

[16] 8 U.S.C. 1182(a)(5)(A). Although this provision references the Attorney General, the authority to adjudicate immigrant visa petitions was transferred to the Director of the Bureau of Citizenship and Immigration Services (an agency within the Department of Homeland Security)—now known as U.S. Citizenship and Immigration Service (USCIS)—by the Homeland Security Act of 2002, Public Law 107-296, 451(b) (codified at 6 U.S.C. 271(b)). Under 6 U.S.C. 557, references in federal law to any agency or officer whose functions have been transferred to the Department of Homeland Security shall be deemed to refer to the Secretary of Homeland Security or other official or component to which the functions were transferred.

[17] *See* 8 U.S.C. 1153(b)(2)–(3), 1182(a)(5)(D). Section 1153(b)(2) governs the EB-2 classification of immigrant visas granted to foreign workers who are either professionals holding advanced degrees (master's degree or above or foreign equivalent degree, or a bachelor degree or foreign equivalent degree plus five years of progressive experience in the specialty) or persons of "exceptional ability" in the sciences, arts, or business. To gain entry in this category, the foreign worker must have prearranged an offer of employment with a U.S. employer that meets the requirements of labor certification, unless the work he or she is seeking admission to perform is in the "national interest," such as to qualify for a waiver of the job offer (and hence, the labor certification) requirement under 8 U.S.C. 1153(b)(2)(B). Section 1153(b)(3) governs the EB-3 classification of immigrant work visas granted to foreign workers who are

visa under the EB-2 or EB-3 preference categories generally must file a visa petition with the Department of Homeland Security on the worker's behalf, and the petition must include a labor certification from the Secretary of Labor.[18] Further, the Department of State (DOS) may not issue a visa unless the Secretary of Labor has issued a labor certification in conformity with the relevant provisions of the INA.[19] If the Secretary determines both that there are not sufficient able, willing, qualified, and available U.S. workers and that employment of the alien worker will not adversely affect the wages and working conditions of similarly employed U.S. workers, the Secretary so certifies to DHS and DOS by issuing a permanent labor certification. If the Secretary cannot make one or both of the above findings, the application for permanent employment certification is denied.

Under the INA, the EB-2 classification applies to aliens who are "members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States."[20] DHS regulations, in turn, define an "advanced degree" as any United States academic or professional degree, or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.[21] If a doctoral degree customarily is required by the specialty, the alien must have a United States doctorate or a foreign

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either "skilled workers," "professionals," or "other" (unskilled) workers, as defined by the statute. To gain entry in this category, the foreign worker must have a prearranged offer of employment with a U.S. employer that meets the requirements of labor certification, without exception.

[18] 8 U.S.C. 1154(a)(1)(F), 1182(a)(5)(A) and (D).

[19] 8 U.S.C. 1153(b)(2), (b)(3)(C), 1201(g).

[20] 8 U.S.C. 1153(b)(2)(A).

[21] 8 CFR 204.5(k)(2). Note that this equivalency is defined by DHS regulations for the purposes of EB-2 classification. The Department is not expressing a view on the substantive equivalence of these qualifications outside of that regulatory framework.

equivalent degree.[22] The regulations go on to define "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business."[23]

The EB-3 program consists of three discrete classifications: "skilled worker," defined as aliens who are "capable . . . of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States;" "professional," defined as "a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions;" and "other worker," defined as aliens who are "capable . . . of performing unskilled labor (requiring less than two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States."[24]

3. Labor Condition Application

The Secretary must certify an LCA filed by a U.S. employer before the employer may employ an alien worker under the E-3, H-1B, or H-1B1 programs.[25] LCAs apply only to temporary nonimmigrant visa classifications; permanent sponsorship is pursued through the PERM labor certification process under INA § 212(a)(5)(A). Because many H-1B workers later adjust to permanent residence under the EB-2 or EB-3 classification, this NPRM maintains a unified wage framework across temporary and permanent programs to ensure consistent protections, as described below.

As noted above, the LCA is submitted by an employer to the Secretary of Labor and states, among other things, that the employer is offering and will offer wages that are at least the actual wage paid by the employer to individuals with similar experience and

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[22] *Id.*
[23] *Id.*
[24] 8 U.S.C. 1153(b)(3); 8 CFR 204.5(l)(2).
[25] See 8 U.S.C. 1101(a)(15)(E)(iii), (H)(i)(b), (H)(i)(b1); 8 CFR 214.2(h)(2)(i)(E); see also 8 U.S.C. 1182(n)(1)(A)(i)–(ii); 8 U.S.C. 1182(n), (t); 20 CFR part 655, subpart H.

qualifications or the prevailing wage for the occupational classification in the area of employment, whichever is greater, and will provide working conditions that will not adversely affect the working conditions of workers similarly employed.[26]

Unlike the PERM program, the H-1B, H-1B1, and E-3 programs allow U.S. employers to employ alien workers temporarily in specialty occupations. "Specialty occupation" is defined as an occupation that requires the theoretical and practical application of a body of "highly specialized knowledge" and at least a bachelor's degree in the specific specialty, or its foreign equivalent, as a minimum requirement for entry into the U.S.-based occupation, meaning that the position must require at least a bachelor's degree in a specific specialty (or its equivalent) and the attainment of such a degree must be a standard minimum requirement for entry into the occupation.[27] The H-1B1 and E-3 nonimmigrant visa classifications also allow U.S. employers to temporarily employ alien workers in specialty occupations, except that these classifications specifically apply to the nationals of certain countries: The H-1B1 classification applies to alien workers in specialty occupations from Chile and Singapore,[28] while the E-3 visa classification applies to alien workers in specialty occupations from Australia.

B. Description of the Permanent Labor Certification Process

The Department's regulations at 20 CFR part 656 govern the PERM labor certification process and set forth the responsibilities of employers who desire to employ, on a permanent basis, alien workers covered by the INA's labor certification requirement.[29] The Department processes labor certification applications for employers

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[26] 8 U.S.C. §§ 1182(n), 1182(t).
[27] *See* 8 U.S.C. 1184(i)(1)(A)–(B).
[28] 8 U.S.C. 1101(a)(15)(H)(i)(b1), 1184(g)(8)(A).
[29] The current regulations were issued through a final rule implementing the streamlined permanent labor certification program through revisions to 20 C.F.R. part 656. The final rule was published on December 27, 2004, and took effect on March 28, 2005. *See* Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System, 69 FR 77326-01 (Dec. 27, 2004). The Department published a final rule on May 17, 2007, to enhance program integrity and reduce the incentives and opportunities for fraud and abuse related to permanent labor certification, commonly known as "the

seeking to sponsor alien workers for permanent employment under the EB-2 and EB-3 immigrant visa preference categories. Aliens seeking admission under, or adjustment of status to, the EB-2 or EB-3 preference categories are inadmissible "unless the Secretary of Labor has determined and certified . . . that—(I) there are not sufficient workers who are able, willing, qualified . . . and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed."[30]

The Secretary makes this determination in the PERM programs by, among other things, requiring the alien worker's sponsoring employer to recruit U.S. workers by offering a wage that equals or exceeds the prevailing wage and to further assure that the employer will pay the alien worker a wage equal to or exceeding the prevailing wage.[31] Prior to filing a labor certification application, the employer first must obtain a Prevailing Wage Determination (PWD) for its job opportunity from the Office of Foreign Labor Certification (OFLC).[32] The standards and procedures governing the PWD process in connection with the permanent labor certification program are set forth in the Department's regulations at 20 CFR 656.40 and 656.41. If the job opportunity is covered by a collective bargaining agreement (CBA) that was negotiated at arm's length between a union and the employer, the wage rate set forth in the CBA is considered the prevailing wage for labor certification purposes.[33] In the absence of a prevailing wage rate derived from an applicable CBA, the employer may elect to use an applicable wage determination

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fraud rule." *Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity,* 72 FR 27904-01 (May 17, 2007).

[30] 8 U.S.C. 1182(a)(5)(A)(i).

[31] 20 CFR 656.10(c)(1). In addition to the prevailing wage requirement, employers must comply with other regulatory obligations under 20 CFR 656.10, including attesting that the job opportunity has been and is clearly open to U.S. workers, that all U.S. workers who applied were rejected only for lawful, job-related reasons, and that the employer has conducted the mandatory recruitment steps required by the PERM regulations.

[32] 20 CFR 656.15(b)(1), 656.40(a).

[33] *See* 20 CFR 656.40(b)(1).

under the Davis-Bacon Act (DBA) or McNamara-O'Hara Service Contract Act (SCA), or provide a wage survey that complies with the Department's regulations.[34] In the absence of any of the above sources, the OFLC will use the BLS OEWS survey to determine the prevailing wage for the job opportunity based on the most specific occupation and geographic area available.[35] After reviewing the employer's application, OFLC will determine the prevailing wage and specify the validity period, which may be no less than 90 days and no more than one year from the determination date.[36]

Once the U.S. employer has received a PWD, the process for obtaining a permanent labor certification generally begins with the U.S. employer filing an *Application for Permanent Employment Certification,* Form ETA-9089, with OFLC.[37] As part of the standard application process, the employer must include, among other things, the labor or services to be performed and actual minimum job requirements contained on the valid PWD, the wage it is offering to pay for such labor or services the geographic location(s) where the work is expected to be performed, and the efforts it made to recruit qualified and available U.S. workers prior to filing the Form ETA-9089. Additionally, the employer must attest to certain labor condition statements on the Form ETA-9089, including that the "offered wage equals or exceeds the prevailing wage determined pursuant to 20 CFR 656.40 and 656.41, and the wage the employer will pay to the alien worker will equal or exceed the prevailing wage that is applicable at the time the alien begins work or from the time the alien is admitted to take up the certified employment."[38]

Through the requisite test of the labor market, the employer also attests, at the time of filing the Form ETA-9089, that the job opportunity has been, and is, clearly open

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[34] 20 CFR 656.40(b), (g).
[35] 20 CFR 656.40(b)(2).
[36] 20 CFR 656.40(c).
[37] Applications for Schedule A occupations are eligible to receive pre-certification and bypass the standard applications review process. In those cases, employers file the appropriate documentation directly with DHS. 20 CFR 656.5, 656.15.
[38] 20 CFR 656.10(c)(1).

to any U.S. worker, and that all U.S. workers who applied for the job opportunity were rejected for lawful, job-related reasons. OFLC performs a review of the Form ETA-9089 and may either grant or deny a permanent labor certification. When OFLC grants a permanent labor certification, the employer must submit proof of the certified Form ETA-9089 along with an *Immigrant Petition for Alien Workers* (Form I-140 petition) to DHS. A permanent labor certification is valid only for the job opportunity, employer, alien worker, and area of intended employment named on the Form ETA-9089 and must be filed in support of a Form I-140 petition within 180 calendar days of the date on which OFLC granted the certification.[39]

C. Description of the Temporary Labor Condition Application Process

The Department's regulations at 20 CFR part 655, subpart H, govern the process for obtaining a certified LCA and set forth the responsibilities of employers who desire to temporarily employ alien workers in H-1B, H-1B1, and E-3 nonimmigrant classifications.

For H-1B petitions subject to the annual numerical cap, employers must first register with U.S. Citizenship and Immigration Services (USCIS) during the designated registration period. This electronic registration process does not require a certified Labor Condition Application (LCA). When USCIS determines that there is more than a sufficient number of unique beneficiaries on whose behalf registrations were properly submitted to meet the H-1B cap, USCIS conducts a lottery to select registrations eligible to file petitions. This lottery process is administered independently of the Department of Labor. Employers must obtain a certified LCA from the Department of Labor before filing the H-1B petition (Form I-129, *Petition for Nonimmigrant Worker*) with USCIS; however, employers can obtain an LCA prior to or after the USCIS registration lottery process. In December 2025, DHS finalized a rule establishing a weighted selection

[39] 20 CFR 656.30(b)(1).

process based on offered wage levels for cap-subject H-1B registrations to favor higher-skilled, higher-paid aliens and strengthen program integrity.[40]

A prospective employer must attest on the LCA that (1) it is offering to and will pay the nonimmigrant, during the period of authorized employment, wages that are at least the actual wage level paid by the employer to all other employees with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of intended employment, whichever is greater (based on the best information available at the time of filing the attestation); (2) it will provide working conditions for the nonimmigrant worker that will not adversely affect working conditions for similarly employed U.S. workers; (3) there is no strike or lockout in the course of a labor dispute in the occupational classification at the worksite; and (4) it has provided notice of its filing of an LCA to its employees' bargaining representative for the occupational classification affected or, if there is no bargaining representative, it has provided notice to its employees in the affected occupational classification by posting the notice in a conspicuous location at the worksite or through other means such as electronic notification.[41]

As relevant here, the prevailing wage must be determined as of the time the LCA is filed.[42] In contrast to the permanent labor certification process, an employer is not required to obtain a PWD from the OFLC.[43] Rather, an employer may base the prevailing wage on one of several sources: an applicable CBA that was negotiated at arm's length between a union and the employer and contains a wage rate applicable to the occupation; a PWD from the OFLC; a wage determination under the Davis-Bacon Act or Service Contract Act; an independent authoritative source—such as a private wage survey—that

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[40] *See* Department of Homeland Security, U.S. Citizenship & Immigration Services, Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions, 90 FR 60864 (Dec. 29, 2025).
[41] 8 U.S.C. 1182(n)(1)(A)–(C), (t)(1)(A)–(C); 20 CFR 655.705(c)(1), 655.730(d).
[42] 20 CFR 655.731(a)(2).
[43] *Id.*

satisfies the requirements in 20 CFR 655.731(b)(3)(iii)(B); or another legitimate source of wage data—such as an industry compensation study—that satisfies the requirements in 20 CFR 655.731(b)(3)(iii)(C).[44]

An employer may not file an LCA more than six months prior to their selected start date.[45] Unless the Secretary finds the LCA is incomplete or obviously inaccurate, the Secretary must certify it within seven working days of its filing.[46] Once an employer receives a certified LCA, it must file the Form I-129, *Petition for a Nonimmigrant Worker*, with USCIS if seeking classification of the alien as an H-1B worker.[47] During the course of adjudicating the nonimmigrant petition, USCIS determines, among other things, whether the petition is supported by a certified LCA that properly corresponds to the petition, whether the employer's position qualifies as a specialty occupation and, if so, whether the alien is qualified for the position.

D. Brief History on Use of the BLS OEWS and Current Prevailing Wage Methodology

1. The Department's Methodology for Establishing Prevailing Wages From 1997 to 2020

The Department has always sought to use the best available information on occupational wages representing workers in the United States similarly employed. The BLS OEWS survey remains the largest ongoing statistical survey program of the federal government, producing employment and gross wage estimates for more than 830 SOC codes, and is used as the primary wage source for establishing skill-based prevailing wage determinations in the nonimmigrant and immigrant visa programs administered by the Department. The BLS produces survey materials and selects the employer

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[44] 20 CFR 655.731(a)(2)(ii)(A)–(C).
[45] 20 CFR 655.730.
[46] 8 U.S.C. 1182(t)(2)(C); 20 CFR 655.740(a)(1).
[47] For aliens seeking H-1B1 or E-3 classification, the alien may apply directly to the State Department for a visa once the LCA has been certified.

establishments to be surveyed using the list of establishments maintained by State Workforce Agencies (SWAs) for unemployment insurance purposes. Wage information based on geographic areas are available at the national and State levels and for certain territories in which statistical validity can be ascertained, including the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Wage information is also made available at the metropolitan and nonmetropolitan area levels within a State.

The OEWS survey primarily covers wage and salary workers in non-farm establishments and does not include the self-employed, owners and partners in unincorporated firms, household workers, or unpaid family workers. The survey is conducted primarily by mail, with telephone follow-ups to nonrespondents, or, if needed, to clarify written responses. Each year, two semiannual panels of approximately 179,000 to 187,000 sampled establishments are contacted, one panel in May and the other in November. Thus, the OEWS employment and gross wage estimates are constructed from a sample of about 1.1 million establishments collected over a 3-year period, which allows the production of data at detailed levels of geography, industry, and occupation and accounts for approximately 57 percent of employers in the United States. OEWS data are published annually with a May reference date. Wages are defined as straight-time, gross pay, including piece rates, but excludes other forms of pay such as overtime, shift differentials, and non-production or any year-end bonuses. Further, because it collects the gross wages paid to each worker in each occupation during the reference period, the OEWS can consistently report more precise wage estimates for any occupation-specific wage distribution to approximate wage differentials paid to U.S. workers similarly employed in a particular occupation and state.

The OEWS survey consists of two components: employment estimates and wage estimates. The employment component provides data on the estimated number of full- and part-time jobs in an occupation and geographic area, offering insight into workforce

distribution and occupational demand across industries and regions. This component measures full- and part-time wage and salary employees in nonfarm industries, but excludes self-employed workers, owners and partners in unincorporated firms, employees of private households, and unpaid family workers. The wage component provides estimates of straight-time, gross pay for employees in an occupation, excluding premium pay such as overtime. The Department incorporated the wage component of the OEWS survey into its prevailing wage guidance in 1997.[48] At the time, the Department divided OEWS wage data into two skill levels: a Level I wage for "beginning level employees" and a Level II wage for "fully competent employees." Because the OEWS survey does not provide data about skill differentials within each Standard Occupational Classification (SOC) code, the Department established the entry and experienced skill levels mathematically.[49]

Specifically, under a Memorandum of Understanding (MOU), BLS computed a Level I wage calculated as the mean of the lowest paid one-third of workers in a given occupation (approximately the 17th percentile of the OEWS wage distribution)[50] and a Level II wage calculated as the mean wage of the highest paid upper two-thirds of workers (approximately the 67th percentile).[51] This two-tier wage structure was based on a practical, informal method of using the mean wage of the lowest paid one-third of the workers surveyed in each occupation to approximate the typical compensation for

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[48] *Prevailing Wage Policy for Nonagricultural Immigration Programs,* General Administration Letter No. 2-98 (GAL 2-98) (Oct. 31, 1997), available at https://www.dol.gov/agencies/eta/advisories/general-administration-letter-no-2-98 and https://www.dol.gov/sites/dolgov/files/ETA/advisories/GAL/1997/GAL2-98_attach.pdf.

[49] GAL 2-98 at 5.

[50] To clarify, the Department notes that, because the old wage methodology took the mean of a portion of the OEWS wage distribution, the precise wage it produced will not always fall at 17th percentile. Rather, the 17th percentile is the midpoint or median of the distribution for which a mean was produced, and is therefore only an approximation for what the actual wage rates would be. The same is true of the old wage methodology for calculating the Level IV wage, which used the mean of the upper two thirds of the OEWS distribution, the midpoint of which is the 67th percentile.

[51] Intra-Agency Memorandum of Understanding executed by Mr. John R. Beverly, III, Director, U.S. Employment Service, ETA, and Ms. Katharine Newman, Chief, Division of Financial Planning and Management, Office of Administration, BLS (Sept. 30, 1998).

"beginning level employees," and the mean wage of the upper two-thirds of the workers surveyed in the occupation to approximate the typical compensation for "fully competent employees."[52]

To implement the INA's four-tier prevailing wage provision, the Department published comprehensive Prevailing Wage Determination Policy Guidance for Nonagricultural Immigration Programs (2005 Guidance), which expanded the two-tier OEWS wage level system to include four "skill levels": Level I "entry," Level II "qualified," Level III "experienced," and Level IV "fully competent."[53] The Department applied the formula specified in the INA to its two existing wage levels to set Levels I through IV, respectively, at approximately the 17th percentile, the 34th percentile, the 50th percentile, and the 67th percentile.[54] The Department's adoption of the four-tiered wage structure is grounded in the INA's statutory mandate, which requires that government surveys used to determine prevailing wages "provide at least four levels of wages commensurate with experience, education, and the level of supervision,"[55] and is consistent with the statutory requirement that wage levels be commensurate with experience, education, and the level of supervision, ensuring that wage determinations meaningfully differentiate among workers based on these factors. This differentiation is part of the statutory scheme wherein the Department is charged with certifying a lack of sufficient workers and that employment of alien workers will not adversely affect the wages or working conditions of U.S. workers.

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[52] GAL 2-98 at 5. *See also Wage Methodology for the Temporary Non-agricultural Employment H-2B Program,* 76 FR 3452, 3453 (Jan. 19, 2011); *Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part 2,* 78 FR 24047, 24051 (Apr. 24, 2013).

[53] ETA Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs 7 (May 9, 2005), available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/policy_nonag_progs.pdf; s*ee also* 85 FR at 63874–76 for a discussion of the development of the prevailing wage determination process. *See* INA § 212(p)(4), 8 U.S.C. § 1182(p)(4) (requiring that any government survey used to determine prevailing wages provide at least four levels of wages commensurate with experience, education, and level of supervision).

[54] *See*, ETA Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs 1 (May 9, 2005).

[55] 8 U.S.C. 1182(p)(4).

In 2010, the Department centralized the prevailing wage determination process for nonagricultural labor certification programs within OFLC's National Prevailing Wage Center (NPWC).[56] In preparation for this transition, the Department issued new Prevailing Wage Determination Policy Guidance for Nonagricultural Immigration Programs (2009 Guidance),[57] which currently informs OFLC's PWD process for the PERM, H-1B, H-1B1, and E-3 visa programs and will continue to inform OFLC's PWD process for these programs. When assigning a prevailing wage using OEWS data, the NPWC examines the nature of the job offer, the area of intended employment, and job duties for workers that are similarly employed.[58] In particular, the NPWC uses the SOC taxonomy to classify the employer's job opportunity into an occupation by comparing the employer's job description, title, and requirements to occupational information provided in sources like the Department's Occupational Information Network (O*Net).[59] Once the NPWC identifies the applicable SOC code, it determines the appropriate wage level for the job opportunity by comparing the employer's job description, title, and requirements to those normally required for the occupation, as reported in sources like O*Net. This determination involves a step-by-step process in which each job opportunity begins at Level I (entry level) and may progress to Level II (experienced), Level III (qualified), or Level IV (fully competent) based on the NPWC's comparison of the job opportunity to occupational requirements, including the education, training, experience, skills,

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[56] *See* Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers), and Other Technical Changes*,* 73 FR 78020 (Dec. 19, 2008); Prevailing Wage Determinations for Use in the H-1B, H-1B1 (Chile/Singapore), H-1C, H-2B, E-3 (Australia), and Permanent Labor Certification Programs; Prevailing Wage Determinations for Use in the Commonwealth of the Northern Mariana Islands*,* 74 FR 63796-01 (Dec. 4, 2009).

[57] Employment and Training Administration; Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (Revised Nov. 2009) (2009 Guidance), available at https://www.dol.gov/sites/dolgov/files/eta/oflc/pdfs/npwhc_guidance_revised_11_2009.pdf.

[58] *Id.* at 3–4.

[59] *Id.* at 1–7; *see also* Occupational Information Network, available at https://www.onetonline.org/. O*Net provides information on skills, abilities, knowledge, tasks, work activities, and specific vocational preparation levels associated with occupations and stratifies occupations based on shared skill, education, and training indicators.

knowledge, and tasks required in the occupation.[60] After determining the prevailing wage level, the NPWC issues a PWD to the employer using the OEWS wage for that level in the occupation and area of intended employment.

2. Regulatory Changes to the Prevailing Wage Methodology in 2020 and Litigation

As discussed in Section I.D.1, the Department has long relied on the BLS OEWS survey to determine prevailing wages for the H-1B, H-1B1, E-3, and PERM programs. The prevailing wage determination process, first implemented through guidance in 2005, was designed to reflect four tiers of wages commensurate with the experience, education, and level of supervision for the job opportunity and to be consistent with the statutory requirements of 8 U.S.C. 1182(p)(4). However, as is detailed further in this NPRM, the methodology adopted in 2005 did not adequately protect U.S. workers from adverse wage effects and deleterious job conditions.[61] The Department also did not clearly articulate a rationale for choosing levels as low as the 17th percentile for Level I and did not similarly provide a reasoned justification for selecting the 67th percentile for Level IV. In addition to these substantive and procedural shortcomings, a growing body of evidence, which is presented below under Section II.B.3, indicates that the 2005 methodology was adversely affecting the wages of U.S. workers.

Therefore, on October 8, 2020, the Department published an Interim Final Rule (IFR) in the *Federal Register* revising the methodology used to determine prevailing wage levels for the H-1B, H-1B1, E-3, and PERM programs.[62] As explained in the IFR, the Department concluded that the existing wage levels were not consistent with the relevant statutory requirement that a government survey used to determine the prevailing wage should provide four wage levels commensurate with experience, education, and

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[60] 2009 Guidance at 6.

[61] While the Department issued updated guidance in 2009 to centralize processing and clarify procedures, that guidance retained the methodology adopted in 2005. Because the NPRM proposes to revise the percentile-based formula introduced in 2005, this section uses the 2005 guidance as the basis of comparison.

[62] 85 FR 63872.

level of supervision.[63] The Department also determined that the existing wage levels were artificially low and provided an opportunity for employers to hire and retain alien workers at wages well below what their U.S. counterparts earn, creating an adverse incentive to prefer the hiring of alien workers to U.S. workers, an incentive that is at odds with the statutory scheme and which causes downward pressure on the wages of the domestic workforce. Therefore, the Department revised wage provisions at 20 CFR 655.731 and 656.40 to adjust the existing wage levels to ensure the wage levels would reflect the wages paid to U.S. workers with similar experience, education, and responsibility to those possessed by similarly employed alien workers.

In particular, the IFR amended paragraphs (a), (b)(2), and (b)(3) of 20 CFR 656.40, codifying the four-tier wage practice and revising the wage level computation methodology. A new § 656.40(b)(2)(i) specified the four new levels (Levels I through IV) to be applied. Paragraph (b)(2)(i)(A) explained the Level I wage would be calculated as the mean of the fifth decile of the wage distribution for the most specific occupation and geographic area available, rather than calculated as the mean of the bottom third of the OEWS wage distribution, as was the case prior to the IFR. Paragraph (b)(2)(i)(D) provided that the Level IV wage would be calculated as the mean of the upper decile of the wage distribution for the most specific occupation and geographic area available, rather than using the mean of the upper two-thirds of the distribution. As a result of these changes, the wage levels were increased, respectively, from approximately the 17th, 34th, 50th, and 67th percentiles to approximately the 45th, 62nd, 78th, and 95th percentiles. The IFR also made minor technical and clarifying amendments to sections 656.40 and 655.731.

[63] *See* 8 U.S.C. 1182(p)(4).

The Department promulgated the IFR pursuant to 5 U.S.C. 553(b)(B) and 553(d)(3)[64,65] due to exigent circumstances created by the coronavirus public health emergency that threatened immediate harm to the wages and job prospects of U.S. workers, as well as the need to avoid evasion by employers of the new wage rates. The Department requested public input on all aspects of the IFR during a post-promulgation 30-day public comment period.

Four groups of plaintiffs separately challenged the Department's IFR. The plaintiffs claimed the Department lacked good cause to issue the IFR without undergoing notice and comment procedures under the APA and that the IFR was arbitrary and capricious and in violation of the INA. These plaintiffs further requested that the IFR be enjoined and the Department prevented from implementing it. In three of the four cases, the district court approved the parties' stipulation to convert plaintiffs' motion for a preliminary injunction into a motion for partial summary judgment on the notice and comment claim. In *Chamber of Commerce*, the district court issued a decision on December 1, 2020, granting plaintiffs' motion for partial summary judgment on their notice and comment claim and setting aside the Department's IFR.[66] In *Purdue University* and *Stellar IT* (which were consolidated), the district court issued a decision on December 14, 2020, granting partial summary judgment to the plaintiffs on the basis that the Department lacked good cause to issue the IFR, and ordered the Department to re-issue prevailing wage determinations issued under the IFR on a mutually agreeable

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[64] The Administrative Procedure Act (APA), 5 U.S.C. 551 et seq., authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). The good cause exception for forgoing notice and comment rulemaking "excuses notice and comment in emergency situations, or where delay could result in serious harm." *Jifry v. F.A.A.*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (internal citations omitted).

[65] *See* Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 5 FR 63872, 63898–63902 (Oct. 8, 2020).

[66] *Chamber of Com. of United States v. United States Dep't of Homeland Sec.*, 504 F. Supp. 3d 1077 (N.D. Cal. 2020). The plaintiffs in this case also challenged an interim final rule issued by DHS, Strengthening the H-1B Nonimmigrant Visa Classification Program, 85 FR 63, 918 (Oct. 8, 2020).

schedule.[67] In the fourth case, *ITServe Alliance*, the district court issued a preliminary injunction on December 3, 2020, prohibiting the Department from enforcing the IFR against the plaintiffs in that case.[68] In discussing plaintiffs' likelihood of success on the merits in that case, the court limited its analysis to plaintiffs' claim that the Department lacked good cause to forgo advance notice and comment.[69] Following the district court's decisions in *Chamber of Commerce* and *ITServe Alliance*, OFLC took immediate action to comply with the courts' directives, including issuing a public announcement on its website on December 3, 2020, outlining the steps it was taking in response to the courts' orders. Notably, none of these rulings addressed the merits of the plaintiffs' challenges to the substance of the IFR.

The Department issued a Final Rule on January 14, 2021, which adopted the IFR's provisions with modifications that were responsive to both public comments and issues raised during litigation.[70] The Final Rule adjusted the wage percentiles and incorporated changes based on public feedback to the 35th and 90th percentiles for Level I and Level IV wages, respectively. The Final Rule's effective date was set for March 15, 2021. On February 1, 2021, the Department proposed to delay the effective date of the final rule for a period of 60 days to May 14, 2021, in response to a Presidential directive.[71] On March 12, 2021, the Department issued a final rule confirming the delay, wherein it cited the need to finish a "comprehensive review of this rulemaking" and the "complexity of this issue" as its rationale for proceeding with the proposed delay.[72] On March 22, 2021, the Department issued a proposal to further delay the effective date of

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[67] *Purdue University, et al. v. Scalia, et al.*, 20-cv-03006, 2020 WL 7340156 (D.D.C. Dec. 14, 2020).
[68] *ITServe All., Inc. v. Scalia*, No. CV 20-14604 (SRC), 2020 WL 7074391 (D.N.J. Dec. 3, 2020).
[69] *Id.* at 3–8.
[70] Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 86 FR 3608 (January 14, 2021).
[71] Memorandum from Ronald A. Klain, Chief of Staff, White House to Heads of Agencies Regarding Regulatory Freeze Pending Review (Jan. 20, 2021), available at https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/.
[72] 86 FR 13995 (Mar. 12, 2021).

the rule by eighteen months to November 14, 2022.[73] The Department again cited the need to have "sufficient time to engage in its comprehensive review of the [Jan. 14, 2021 Final Rule]."[74] The Department acknowledged that "delaying the implementation of the Final Rule is likely to have an impact on the wages paid to workers."[75] Nonetheless, on May 13, 2021, the Department promulgated a final rule confirming the 18-month delay of the effective date.[76] While many commenters supported the delay, "[m]any individual commenters opposed the proposed delay and supported implementing policies that favor and attract higher skilled workers."[77] The Department again "acknowledge[ed] the potential substantial economic impact of this delay not only on employers but also on U.S. and alien workers."[78] "[M]any commenters expressed general opposition to the proposed delay or opposed the proposed delay and urged the Department to implement the higher wage levels as soon as possible. . . ."[79]

On April 2, 2021, the Department also issued a Request for Information (RFI) "to provide information on the sources of data and methodologies for determining prevailing wage levels covering employment opportunities that United States (U.S.) employers seek to fill with alien workers on a permanent or temporary basis through certain employment-based immigrant visas or through H-1B, H-1B1, E-3 nonimmigrant visas."[80] While the comments received on the RFI generally support the Department's assessment of the limitations of the prior methodology and reinforced the need for a revised approach that better aligns with statutory requirements and labor market realities, the comments received did not inform the methodology proposed here.

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[73] 86 FR 15154 (Mar. 22, 2021).
[74] 86 FR 15155.
[75] *Id*. at 15156.
[76] 86 FR 26164 (May 13, 2021).
[77] *Id*. at 26170-71.
[78] *Id*. at 26171.
[79] *Id*.
[80] 86 FR 17343 (Apr. 2, 2021).

On June 23, 2021, the Northern District of California vacated and remanded the January 14, 2021 Final Rule, pursuant to the Department's unopposed voluntary request for vacatur and remand.[81] On December 13, 2021, the Department promulgated a final rule "effectuat[ing] a Federal district court order vacating a January 14, 2021 Final Rule." 86 FR 70729 (Dec. 13, 2021). Subsequently, the Department engaged in no further rulemaking regarding the employment-based immigrant visa or the H-1B, H-1B1, and E-3 nonimmigrant visas that are the subject of this NPRM.

II. Discussion of the Department's Proposed Amendments to the Prevailing Wage Methodology

The Department is issuing this NPRM to solicit public comment on proposed amendments to the prevailing wage computation methodology relied upon in several labor certification programs, specifically the H-1B, H-1B1, and E-3 nonimmigrant visa classifications, as well as the PERM program for employment-based immigrant visas. The Department 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. The Department believes that these increases in the prevailing wage levels are needed because the previous methodology set the prevailing wages too low by relying on a methodology that did not take into account the experience, education, and level of supervision, as required by the INA. As a result, employers were permitted to hire alien workers at wage levels below those that similarly employed U.S. workers were paid, resulting in adverse effects to the wages and working conditions of U.S. workers.

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[81] *See Chamber of Commerce, et al. v. Dep't of Homeland Sec., et al.*, No. 4:20-cv-07331 (N.D. Cal. June 23, 2021), ECF No. 139.

A. Statutory Authority for Amending the Methodology for Computing the Prevailing Wage Levels

The Department's authority to revise the prevailing wage methodology is grounded in its longstanding role of administering the labor certification process and in the discretion afforded to the Department regarding the establishment of prevailing wage levels for the H-1B, H-1B1, E-3, and PERM programs.

Section 1182(a)(5)(A)(i) of the INA provides that, "[a]ny alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that . . . there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed."

Section 1182(n)(1) of the INA provides that "[n]o alien may be admitted or provided status as an H-1B nonimmigrant . . . unless the employer has filed with the Secretary of Labor an application stating the following . . . [that] the employer 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, whichever is greater. . . ." 1182(n)(1); 1182(n)(1)(A); 1182(n)(1)(A)(i); 1182(n)(1)(A)(i)(II); *see also* 1182(n)(2). Section 1182(t)(1) contains nearly-identical language with respect to H-1B1 and E-3 and

nonimmigrants. 8 U.S.C. § 1182(t)(1); 1182(t)(1)(A); 1182(t)(1)(A)(i); 1182(t)(1)(A)(i)(II).

In turn, Section 1182(p)(4) of the INA provides that the Secretary of Labor may "use, or make available to employers, a governmental survey to determine the prevailing wage." This section also provides that the "survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision." Section 1182(p)(3) requires that the "prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections." These statutory requirements are discussed in further detail in Section II.B.2 of this NPRM.

Congress "often enact[s]" statutes in which the agency is authorized to exercise a degree of discretion." *Loper Bright Enter. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024). "[S]ome statutes 'expressly delegate[]' to an agency the authority to give meaning to a particular statutory term." *Id.* (citation omitted). "Others empower an agency to prescribe rules to 'fill up the details' of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility.'" *Id.* (citation omitted). The statutory provisions listed above are of the type identified by the Supreme Court in *Loper Bright* that "delegate[] discretionary authority" to the Department on how best to determine prevailing wages such that the employment of alien workers will not adversely affect U.S. workers. The Department's authority to set wage levels is also necessary for it to fulfill its statutory functions and duties under Sections 1182(a)(5)(A), 1182(n)(1),

1182(n)(2)(A),[82] 1182(t)(1), and 1182(t)(2)(A), as well as its role in the overall statutory scheme.[83]

B. Reasons for Adjusting the Prevailing Wage Levels

1. Summary

On September 19, 2025, the President issued Proclamation 10973 ("Proclamation"), "Restriction on Entry of Certain Nonimmigrant Workers," which, among other provisions, directed the Secretary of Labor to initiate rulemaking to revise prevailing wage levels under the H-1B program.[84] The Proclamation explained that the H-1B program "has been deliberately exploited to replace, rather than supplement, U.S. workers with lower-paid, lower-skilled labor." The Proclamation cited longstanding concerns that the H-1B program, as currently administered, may be used in ways that undermine U.S. labor standards, create downward pressure on wages, and displace U.S. workers. The Proclamation further noted that the current wage structure may incentivize the hiring of alien workers at significantly lower wages than their U.S. counterparts, thereby undermining the program's original intent which was to allow employers to obtain temporary specialized labor when equally skilled and qualified U.S. workers could not be found.

The Department is proposing this rule because the current methodology for setting prevailing wages often allows employers to pay alien workers significantly less than what similarly qualified U.S. workers earn for the same jobs in the same area of intended employment. This not only results in unfair competition for U.S. workers,

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[82] Moreover, the Secretary's duty under 8 U.S.C. § 1182(n)(2)(A) to establish procedures for receiving, investigating, and resolving LCA-related complaints includes the authority to promulgate regulations to ensure employer compliance with LCAs. *See, e.g.*, *Aleutian Cap. Partners, LLC v. Scalia*, 975 F.3d 220, 230 (2d Cir. 2020). The Department's authority to promulgate prevailing wage rates is also part of its express enforcement authority.

[83] *C.f. e.g., N. Carolina Farm Bureau Fed'n v. U.S. Dep't of Labor*, 781 F. Supp. 3d. 455; 2025 WL 1296245, *12 (E.D.N.C. 2025) ("NCFBF") (the Department has broad authority to "'fill up the details' of its statutory directive,"); *Kansas v. U.S. Dep't of Labor*, 749 F. Supp. 3d 1363, 1374 (S.D. Ga. 2024) (reaffirming the Department's authority to "issue regulations to ensure that any certifications it issues for H-2A visas do not 'adversely affect' American agricultural workers").

[84] Proclamation No. 10973, 90 FR 46027 (Sept. 19, 2025).

particularly in high-skill sectors like the STEM (science, technology, engineering, and mathematics) fields, and adverse effects on the wages of U.S. workers, but also undermines the integrity of the immigration system by incentivizing the use of lower-paid and lower-skilled alien workers over available domestic talent. This misuse of the H-1B program undermines its original statutory purpose—which is to allow employers to temporarily hire alien workers in specialty occupations requiring the "theoretical and practical application of a body of highly specialized knowledge"[85]—by transforming it into a mechanism for importing lower-cost labor. The current methodology further undermines the Department's statutory duties under Section 1182(a)(5)(A) of the INA to ensure that the employment of alien workers does not impose adverse effects onto the wages and working conditions of American workers. By updating how wage levels are calculated, the Department aims to ensure that alien workers are paid fairly and that U.S. workers are not displaced or undercut—helping to restore balance, fairness, and public confidence in the labor certification process.

Similarly, as is described in more detail below in Section II.B.3, the Department has determined that the current prevailing wage methodology does not adequately reflect labor market realities and may suppress wages and displace U.S. workers. As the Department has noted previously, "prevailing wage rates produced by the four-tier wage structure should approximate actual market wages to the greatest extent possible." 86 FR 3634.

In response to these concerns, the Department of Labor is proposing to revise the methodology used to determine prevailing wage levels under the H-1B, H-1B1, E-3, and PERM programs. The proposed changes are intended to ensure that the employment of alien workers does not adversely affect the wages and working conditions of U.S.

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[85] 8 USC 1184(i)(1)(A). Additionally, the term "specialty occupation" is also defined to require "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." *Id*. at (i)(1)(B).

workers, consistent with the Department's statutory obligations in section 1182(a)(5)(A), 1182(n), and 1182(t) of the INA. When prevailing wage rates are set below what comparable U.S. workers would typically earn, it creates an incentive for employers to hire alien workers who cost less, which in turn, reduces job opportunities for equally qualified U.S. workers.[86]

While the Presidential Proclamation only identifies the H-1B program for regulatory overhaul, any adjustment to prevailing wage levels in this program will also implicate prevailing wage levels in the H-1B1, E-3, and PERM programs because the Department of Labor uses a unified four-tiered wage structure across all of these visa programs. The same OEWS data and percentile-based methodology are used to determine wage levels for both temporary (H-1B, H-1B1, E-3) and permanent (PERM) labor certification processes. Given that over 58% of FY 2024 PERM applications were filed on behalf of aliens already employed in H-1B status, maintaining consistency in wage determinations across these programs is essential to ensure that the statutory requirement—that the employment of alien workers not adversely affect the wages and working conditions of U.S. workers—is met uniformly.[87] Divergent wage structures would create perverse incentives for employers to exploit lower wage thresholds in one program to circumvent higher prevailing wages being offered in the other, ultimately undermining the integrity of all visa programs that utilize the current prevailing wage methodology. The Department therefore believes that revising the wage level for these other programs that are intertwined with the H-1B program, therefore, is also necessary and appropriate.

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[86] Ron Hira, Is There Really a STEM Workforce Shortage?, Issues in Science and Technology, Vol. XXXVIII, No. 4, Summer 2022, available at https://issues.org/stem-workforce-shortage-data-hira/.
[87] Department of Labor, Employment and Training Administration, FY 2024 PERM Performance Data, available at https://www.dol.gov/agencies/eta/foreign-labor/performance.

2. The Relationship between the Prevailing Wage Levels, OEWS Survey, and the INA

The Department's prevailing wage determinations serve as a critical safeguard in both the H-1B and PERM programs, ensuring that the employment of alien workers does not adversely affect the wages and working conditions of U.S. workers. These determinations rely heavily on data from the Occupational Employment and Wage Statistics (OEWS) survey, which provides wage estimates across occupations and geographic areas. However, because the OEWS survey was not originally designed to reflect the statutory requirements of the Immigration and Nationality Act (INA), the Department must carefully evaluate how to align OEWS-based wage levels with the INA's mandate to protect U.S. workers.

As noted, the INA requires employers to pay H-1B workers 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." The statute further provides that, when a government survey is used to establish the wage levels, "such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision." If an existing government survey produces only two levels, the statute provides a formula to calculate two intermediate levels. Thus, similar to the statute's actual wage clause, the prevailing wage requirement, when calculated based on a government survey, makes the qualifications possessed by workers in the occupation, namely education, experience, and responsibility, an important part of the wage calculation. Put slightly differently, both clauses yield wage requirements that are meant to align with the wages that similarly employed U.S. workers are being compensated with a requirement that employers pay the higher available wage. In this way, the statutory scheme is meant to "protect U.S. workers' wages and eliminate any economic incentive

or advantage in hiring temporary alien workers." If employers are required to pay H-1B workers approximately the same wage paid to U.S. workers who perform the same type of work in the same geographic area and with similar levels of education, experience, and responsibility as the H-1B workers, employers will have significantly diminished incentives to prefer H-1B workers over U.S. workers. By reducing the perverse incentive to favor alien H-1B workers over the domestic workforce, U.S. workers' wages will not be suppressed by the presence of alien workers in the relevant labor market.

To set appropriate prevailing wage levels consistent with the purpose of the relevant statutory provisions and statutory mandate on the Department, as discussed below, the Department has concluded that it is appropriate to focus on the wages of those U.S. workers that are most similarly employed to alien workers in the H-1B program, those receiving an EB-2 visa, and higher skilled EB-3 visa recipients.

Based on the statutory qualifications to be eligible to receive H-1B status, the Department thinks that while the OEWS survey is the best source of wage data available for use in the Department's foreign labor certification programs, the wage data for any particular occupation does not perfectly align with the requirement that workers in the H-1B program possess highly specialized knowledge. This fact necessarily shapes how the Department integrates the OEWS survey into its foreign labor programs and also demonstrates the existing wage levels' inconsistency with the INA.

At the outset, the Department notes that much of its assessment of how best to adjust the prevailing wage levels gives special attention to the H-1B program. The H-1B program accounts, by order of magnitude, for the largest share of alien workers covered by the Department's four-tier wage structure. Upwards of 80 percent of all workers admitted or otherwise authorized to work under the programs covered by the wage

structure are H-1B workers.[88] This, in combination with the fact that, as explained below, the risk of adverse effects to U.S. workers posed by the presence of alien workers is most acute where there are high concentrations of such workers, supports the Department's determination to focus on the H-1B program. Because the wage structure governs, and, for reasons explained below, will continue to govern wages for hundreds of thousands of workers across five different foreign labor programs and hundreds of different occupations, no wage methodology will be perfectly tailored to the unique circumstances of every job opportunity.[89] Accordingly, the Department thinks that it is appropriate to focus its analysis on the H-1B program and those occupations in which the vast majority of H-1B workers are employed.

Relatedly, the Department notes that the H-1B program is closely linked to the PERM programs that are also covered by the Department's wage structure. A majority of workers covered by PERM labor certification applications are already working in the U.S. as H-1B nonimmigrants, and there is significant overlap in the types of occupations in which H-1B and PERM workers are employed.[90] It is also clear that H-1B status often serves as a pathway to employment-based lawful permanent resident status for many alien workers.[91] The programs have thus long been regulated in connection with one

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[88] *See* Department of Homeland Security, 2017 Yearbook of Immigration Statistics, Table 7. Persons Obtaining Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2017, available at https://ohss.dhs.gov/topics/immigration/yearbook/2017/table7; United States Citizenship and Immigration Services, Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2017 Annual Report to Congress October 1, 2016–September 30, 2017 (Apr. 9, 2018), available at https://www.uscis.gov/sites/default/files/document/reports/Characteristics-of-Specialty-Occupation-Workers-H-1B-Fiscal-Year-2017.pdf.

[89] *Cf.* Wage Methodology for the Temporary Non-agricultural Employment H-2B Program, 76 FR 3452, 3461 (Jan. 19, 2011) (justifying wage methodology designed for lower-skilled workers that was adopted in the H-2B program on grounds that the program "is overwhelmingly used for work requiring lesser skilled workers," while also acknowledging that "not all positions requested through the H-2B program are for low-skilled labor.").

[90] In FY2024, 57.6 percent of all PERM labor certification applications filed were for H–1B workers already working in the United States. Department of Labor, Employment and Training Administration, *Performance Data*, available at https://www.dol.gov/agencies/eta/foreign-labor/performance.

[91] *See* Sadikshya Nepal, *The Convoluted Pathway from H-1B to Permanent Residency: A Primer*, Bipartisan Policy Center (July 7, 2020), available at https://bipartisanpolicy.org/article/the-convoluted-path-from-h-1b-to-permanent-residency-a-primer/.

another.[92] For these reasons, giving particular attention to the H-1B program and the determination of how wages for H-1B workers are calculated is intimately connected with how the wages for alien workers in the PERM program are calculated, given that many H-1B workers find themselves eventually in the PERM program. It is therefore appropriate that the Department's analysis applies with equal force to both programs.

Under the INA, H-1B, H-1B1, and E-3 classification can, in most cases, only be granted to aliens entering the U.S. to perform services "in a specialty occupation."[93] The statute defines "specialty occupation" as an occupation that requires theoretical and practical application of a body of "highly specialized knowledge" and the "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."[94] An alien may be classified as an H-1B specialty occupation worker if the alien possesses "full state licensure to practice in the occupation, if such licensure is required to practice in the occupation," "completion of [a bachelor's or higher degree in the specific specialty (or its equivalent)]," or "(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty."[95] DHS regulations further clarify the requirements for establishing that the position is a specialty occupation and that the beneficiary of an H-1B petition must be qualified for a specialty occupation.[96] The Department's regulations restate the statute's definition of specialty occupation essentially verbatim.[97]

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[92] *See* 144 Cong. Rec. S12741, S12756 (explaining that 8 U.S.C. 1182(p)"spells out how [the prevailing] wage is to be calculated in the context of both the H-1B program and the permanent employment program in two circumstances."); Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 FR 82398-01 (November 18, 2016).
[93] 8 U.S.C. 1101(a)(15)(H)(i)(b).
[94] 8 U.S.C. 1184(i)(1)(i)–(ii).
[95] 8 U.S.C. 1184(i)(2)(C)(i)–(ii).
[96] 8 CFR 214.2(h)(4)(iii)(A), (C).
[97] *Compare* 20 CFR 655.715 *with* 8 U.S.C. 1184(i)(1)(i)–(ii).

A few features of the definition bear emphasizing. First, the INA sets the attainment of a bachelor's degree in a specific specialty, or experience that would give an individual expertise equivalent to that associated with a bachelor's degree in the specific specialty, as the baseline, minimum requirement for an alien to qualify for the classification. Of even greater importance, having "any bachelor's degree" as a job requirement is not sufficient to qualify a job as a specialty occupation position—the bachelor's degree or equivalent required to perform the job must be "in the specific specialty." In other words, the bachelor's degree required, or equivalent, must be specialized to the particular needs of the job, and impart a particularized level of expertise tailored to a given field.[98] These aspects of the definition play an important role in how the Department will use data from the BLS OEWS survey to set appropriate prevailing wage levels.

The Department has long relied on OEWS data to establish prevailing wage levels. That is because it is a comprehensive, statistically valid survey that, in many respects, is the best source of wage data available for satisfying the Department's purposes in setting wages in most immigrant and nonimmigrant visa programs. As the Department has previously noted the OEWS wage survey is among the largest continuous statistical survey programs administered by the federal government. BLS produces the survey materials and selects the nonfarm establishments to be surveyed using the list of establishments maintained by State Workforce Agencies (SWAs) for unemployment insurance purposes. The OEWS collects data from over 1 million establishments. Salary levels based on geographic areas are available at the national and State levels and for

[98] *See Chung Song Ja Corp.* v. *U.S. Citizenship & Immigration Servs.,* 96 F. Supp. 3d 1191, 1197–98 (W.D. Wash. 2015) ("Permitting an occupation to qualify simply by requiring a generalized bachelor degree would run contrary to congressional intent to provide a visa program for specialized, as opposed to merely educated, workers."); *Caremax Inc* v. *Holder,* 40 F. Supp. 3d 1182, 1187–88 (N.D. Cal. 2014) ("A position that requires applicants to have any bachelor's degree, or a bachelor's degree in a large subset of fields, can hardly be considered specialized.") (citing *Fred 26 Importers, Inc. v. Dept. of Homeland Sec.*, 445 F.Supp.2d 1174, 1179–80 (C.D. Cal. 2006)).

certain territories in which statistical validity can be ascertained, including the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Salary information is also made available at the metropolitan and nonmetropolitan area levels within a State. Wages for the OEWS survey are straight-time, gross pay, exclusive of premium pay. Base rate, cost-of-living allowances, guaranteed pay, hazardous duty pay, incentive pay including commissions and production bonuses, tips, and on-call pay are included. The features described above are unique to the OEWS survey, which is a comprehensive, statistically valid, and useable wage reference.[99]

Put simply, the OEWS survey's quality and characteristics have made it, and continue to make it, a useful tool for setting prevailing wage levels in the Department's foreign labor programs. There are no alternative surveys or sources of wage data that would provide DOL with wage information at the same level of granularity needed to properly administer the H-1B and PERM programs. In response to the Department's 2021 Request for Information, no commenter identified a more suitable and comprehensive data source than the OEWS for determining prevailing wages, further reinforcing the Department's continued reliance on this dataset.

That said, the OEWS survey is not specifically designed to serve these programs. For one thing, "the OEWS survey captures no information about differences within the [occupational] groupings based on skills, training, experience or responsibility levels of the workers whose wages are being reported"[100]—the factors the INA requires the Department to rely on in setting prevailing wage levels.[101] Relatedly, "there are factors in addition to skill level that can account for OEWS wage variation for the same occupation and location."[102] Further, the geographic areas used by BLS to calculate local wages do

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[99] Wage Methodology for the Temporary Non-agricultural Employment H-2B Program, 76 FR 3452, 3463 (Jan. 19, 2011).
[100] Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, 80 FR 24146, 24155 (Apr. 29, 2015).
[101] 8 U.S.C. 1182(p)(4).
[102] Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, 80 FR at 24159.

not always match up exactly with the "area of employment" for which wage rates are set, as that term is defined by the INA for purposes of the H-1B program.[103] So while the OEWS survey is the best available source of wage data for the Department's purposes, and the Department is proposing to continue using it as the data source, the Department's use of the OEWS data must be done in a way that aligns with the requirements in the INA.

Because the wage methodology will, by statute, be used to establish the prevailing wage for the H-1B program and highly skilled workers that are the beneficiaries of PERM applications, as discussed above, the INA's definition of "specialty occupation" is relevant to how the wage levels are set using the OEWS wage survey. The survey categorizes workers into occupational groups defined by the SOC system, a federal statistical standard used by federal agencies to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data.[104] An informative source on the duties and educational requirements of a wide variety of occupations, including those in the SOC system, is the Department's Occupational Outlook Handbook (OOH), which, among other things, details for various occupations the baseline qualifications needed to work in each occupation. A review of the OOH shows that only a portion of the workers covered by many of the occupational classifications used in the OEWS survey likely have levels of education and experience similar to those of H-1B workers in the same occupation.[105] Some share of workers in

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[103] 8 U.S.C. 1182(n)(4)(A).

[104] U.S. Bureau of Labor Statistics, Standard Occupational Classification, available at https://www.bls.gov/soc/.

[105] The five most common SOC codes represented in LCAs in FY 2024 were Software Developers (15-1252), Computer Systems Engineers/Architects (15-1299.08), Information Technology Project Managers (15-1299.09), Electronics Engineers, Except Computer (17-2072.00) and Software Quality Assurance Analysts and Testers (15-1253.00) FY 2024 LCA Performance data. These occupations accounted for approximately 47 percent of all LCA's filed in FY 2024.
For each of these occupations, for which data was available, at least some of the respondents to the BLS surveys underlying their data reported educational requirements below the baccalaureate threshold: Software Developers (5% - Associate's degree required); Computer Systems Engineers/Architects (68% - either a Post-secondary certificate or Associate's degree required); Information Technology Project

these classifications do not have the education or experience qualifications necessary to be considered similarly employed to specialty occupation workers. Because the INA requires the prevailing wage levels for the H-1B, H-1B1, and E-3, and PERM programs to be set based on the wages of U.S. workers based on the levels of education, experience, and supervision in the relevant occupation, the Department must take this into account when using OEWS data to determine prevailing wages.

For example, a common occupational classification in which employers seek to employ H-1B nonimmigrants is Software Developer.[106] The OOH's entry for Software Developer notes that Software Developers *typically* have a bachelor's degree.[107] In other words, while typical, a bachelor's degree-level education, or its equivalent, is not always a prerequisite for working in this occupation. Because a person without a specialized bachelor's degree can still be employed as a Software Developer, some portion of Software Developers captured by the OEWS survey are not similarly situated to H-1B workers because the baseline qualifications to enter the occupation based on the OOH do not match the statutory requirements for H-1B workers.

A similar analysis applies to the occupation of Registered Nurse (RN). According to the OOH, entry into the RN occupation may be achieved through a bachelor's degree in nursing (BSN), an associate's degree in nursing (ADN), or a diploma from an approved nursing program.[108] For prevailing wage purposes, the Department's

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Managers (43% - either a Post-secondary certificate or Associate's degree required); Electronics Engineers, Except Computer (14% - Associate's degree required); and Software Quality Assurance Analysts and Testers (35% - either a Post-secondary certificate or Associate's degree required). *See*, https://www.onetonline.org/link/summary/15-1252.00; https://www.onetonline.org/link/summary/15-1299.08; https://www.onetonline.org/link/summary/15-1299.09; https://www.onetonline.org/link/summary/17-2072.00; and https://www.onetonline.org/link/summary/15-1253.00, respectively.

[106] *See* Office of Foreign Labor Certification, LCA (H-1B, H-1B1, and E-3) Temporary Specialty Occupations Labor Condition Program—Selected Statistics, FY 2024, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/LCA_Selected_Statistics_FY2024_Q4.pdf.

[107] Bureau of Labor Statistics, Occupational Outlook Handbook, Software Developers, Quality Assurance Analysts, and Testers, available at https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm.

[108] Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Registered Nurses, available at https://www.bls.gov/ooh/healthcare/registered-nurses.htm.

methodology considers the broader population of RNs—including those with associate's degrees and diplomas—when determining the wages of U.S. workers who are similarly situated in terms of education, experience, and job duties.[109] In cases where an employer seeks a prevailing wage determination for a nursing position that requires higher qualifications, such as advanced practice or management roles, the prevailing wage determination may reflect the higher educational or experiential requirements, provided the employer demonstrates that such requirements are normal for the occupation and the position.[110] This approach ensures that prevailing wage determinations for nursing occupations are aligned with labor market realities and statutory requirements.

A review of the OOH entries for the occupations in which H-1B nonimmigrants most commonly work demonstrates that most H-1B workers fall within SOC classifications that include some number of workers who would not qualify for employment in a specialty occupation. For instance, the OOH entries for Software Developers—an occupation accounting for over 32 percent of all certified LCAs[111]—provides that a bachelor's degree is the *typical* level of education that most workers need" to become one. Computer Systems Analysts, which make up approximately 2.8 percent of all certified LCAs,[112] "typically need a bachelor's degree . . ."[113] Moreover, O*Net does not differentiate between jobs that require bachelor's degrees in specific specialties

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[109] See 20 CFR 656.40(b)(2) (prevailing wage determinations are based on the wages of workers "similarly employed" in the occupation and area of intended employment, as reflected in the OEWS survey).
[110] See 20 CFR 656.40(b)(2); see also DOL Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (2009), at 4–5 (explaining that the wage level may be adjusted based on the requirements of the position and the normal requirements for the occupation).
[111] Office of Foreign Labor Certification, H-1B Temporary Specialty Occupations Labor Condition Program—Selected Statistics, FY 2024, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/LCA_Selected_Statistics_FY2024_Q4.pdf.
[112] Office of Foreign Labor Certification, H-1B Temporary Specialty Occupations Labor Condition Program—Selected Statistics, FY 2024, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/LCA_Selected_Statistics_FY2024_Q4.pdf.
[113] Bureau of Labor Statistics, Occupational Outlook Handbook, Computer Systems Analysts, available at https://www.bls.gov/ooh/computer-and-information-technology/computer-systems-analysts.htm; Office of Foreign Labor Certification, LCA (H-1B, H-1B1, and E-3) Temporary Specialty Occupations Labor Condition Program—Selected Statistics, FY 2024, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/LCA_Selected_Statistics_FY2024_Q4.pdf.

and those that accept a general bachelor's degree. Because prevailing wages must reflect the wages paid to U.S. workers who are similarly employed—that is, those with comparable education, experience, and responsibility—the Department's analysis focuses only on the subset of U.S. workers in each occupation who would meet the statutory qualifications for H-1B employment, rather than the broader population included in OEWS wage data.[114]

Simply put, the universe of workers surveyed by the OEWS for some of the most common occupational classifications in which H-1B workers are employed is larger than the pool of workers who can be said to have levels of education and experience comparable to those of even the least skilled H-1B workers performing work within that occupational classification. Because this methodology will substantially apply to H-1B petitions and PERM applications for H-1B worker beneficiaries, to allow for a more direct comparison and therefore set a more accurate prevailing wage, it would be inappropriate to consider the wages of the least educated and experienced workers in these occupational classifications in setting the prevailing wage levels. To conclude otherwise would place the Department at odds with one of the purposes of the INA's core wage protections—to prevent employers from using alien workers to depress wage levels, which in turn reduces pay and job opportunities for U.S. workers.

This consideration also demonstrates the problems with the existing wage levels. As noted above, the Department's first wage level is currently set by calculating the mean of the bottom third of the OEWS wage distribution. Because the majority of LCAs receive a Level I or II wage, the wages for many H-1B workers are set based on a calculation that takes into account wages paid to workers who almost certainly would not

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[114] The Occupational Information Network (ONET), developed by the U.S. Department of Labor, provides detailed information on the knowledge, skills, abilities, education, and work activities associated with occupations classified under the Standard Occupational Classification (SOC) system. In the context of prevailing wage determinations, ONET is used by the Department to help assess the complexity and requirements of job duties, which informs the appropriate wage level assignment based on the education, experience, and supervision required for the position.

qualify to work in a "specialty occupation," as defined by the INA.[115] The Department has noted previously that "workers in occupations that require sophisticated skills and training receive higher wages based on those skills."[116] As a worker's education and skills increase, his wages are expected to as well.[117] For that reason, it is likely that workers at the lowest end of an occupation's wage distribution generally have the lowest levels of education, experience, and responsibility in the occupation. In consequence, if the occupation by definition includes workers who do not have the level of specialized knowledge required of H-1B workers, because of the prevalence of Level I and Level II wages assigned to LCAs the very bottom of the wage distribution should be discounted in determining the appropriate baseline along the OEWS wage distribution to establish the entry-level wage under the four-tiered wage structure. Yet the existing wage structure makes such workers a central component of the prevailing wage calculation.[118]

Similarly, the current Level IV wage is set by calculating the mean of the upper two-thirds of the wage distribution. That means that the wage level provided for the most experienced and highly educated H-1B workers is determined, in part, by taking into account a sizeable number of workers who do not even make more than the median wage of the occupation. The Department is concerned that workers making less than the

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[115] Indeed, even in the Department's original 2005 guidance setting the current prevailing wage methodology, the Department observed that "[e]mployer requests for foreign workers are frequently for fully qualified workers who possess special skills. Wage Level I would not be assigned in those situations." *See* Employment and Training Administration, Prevailing Wage Determination Policy Guidance for Nonagricultural Immigration Programs 6 (Mar. 1, 2005), available at https://www.aila.org/files/o-files/view-file/84809966-67A1-4645-95CB-CB8F826C1F3C.

[116] Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program, Part 2, 78 FR 24047, 24051 (Apr. 24, 2013).

[117] *See* Bureau of Labor Statistics, Learn more, earn more: Education leads to higher wages, lower unemployment, available at https://www.bls.gov/careeroutlook/2020/data-on-display/education-pays.htm.

[118] For example, the occupation of Software Developers, which accounts for a large number of H-1B workers, does not, as explained above, require the same degree of specialized knowledge as a baseline entry requirement as does the INA's definition of "specialty occupation." Yet approximately 10 percent of all LCAs filed with the Department for software developer positions classify those positions as entry-level, meaning that under the current wage levels the wages paid to such specialty occupation workers are calculated based, at least in part, on the wages paid to some workers who do not have comparable specialized knowledge and expertise. This outcome directly contravenes the INA's requirement that H-1B workers be paid wages commensurate with the wages paid to U.S. workers with similar levels of education, experience, and responsibility.

median wage of the occupation are unlikely to possess commensurate experience, education, and requirements for supervision as are the alien workers who would be regarded as typical of Wage Level IV. The Department's analysis of OEWS wage distributions confirms that the current Level IV methodology includes a substantial share of workers whose wages—and likely qualifications—fall below what would be expected for the most advanced roles, thereby undermining the intended purpose of the highest wage tier.

The same reasons for discounting a portion of the workers at the bottom of the OEWS wage distribution in order to compute appropriate entry-level wages, based on the fact that such workers are not similarly employed to even the least skilled H-1B workers, also applies to the wages for the EB-2 immigrant visa preference classification and the E-3 and H-1B1 nonimmigrant programs, for which the Department also uses the four-tier prevailing wage structure.

The E-3 and H-1B1 classifications, like the H-1B classification, require that the alien work in a specialty occupation.[119] Thus these programs' relation to the OEWS wage data is essentially identical to that of the H-1B program. Although E-3 and H-1B1 workers may not necessarily be concentrated in the same occupational categories as H-1B workers, the statutory requirement that they be employed in specialty occupations means they must possess comparable levels of skill, specialization, and responsibility. As such, the level of skill, specialization, and responsibility required for E-3 and H-1B1 positions is often comparable to that required for H-1B positions. Applying the same prevailing wage structure across these classifications ensures consistency in how the Department protects U.S. workers and prevents employers from selecting among visa categories based on wage-setting advantages rather than legitimate labor needs.

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[119] *See* 8 U.S.C. 1184(i).

As for the EB-2 classification, the reasons for discounting the lower end of the OEWS wage distribution for setting the baseline to establish an entry-level wage for the classification are even more apparent than they are for the specialty occupation programs. Under the INA, the EB-2 classification applies to individuals who are "members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States."[120] DHS regulations, in turn, define an "advanced degree" as any United States academic or professional degree or a foreign equivalent degree above that of a bachelor's degree. A United States bachelor's degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.[121]

The regulation goes on to define "exceptional ability" to mean "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business."[122]

As is the case for H-1B nonimmigrants, the baseline, minimum qualifications that an EB-2 immigrant must possess exceed the educational and experiential requirements the OOH describes as generally necessary to enter some of the most common SOC occupational classifications in which EB-2 immigrants work. For example, the most common occupation in which PERM labor certifications—of which applications for EB-2 immigrants represent a substantial share—are sought is Software Developers, which

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[120] 8 U.S.C. 1153(b)(2)(A).
[121] 8 CFR 204.5(k)(2).
[122] *Id*.

accounts for nearly 21 percent of all approved PERM applications.[123] As already noted, according to the OOH, a bachelor's degree is the "[t]ypical level of education" for Software Developers.[124] A master's degree, generally a requirement for obtaining EB-2 immigrant status, is therefore substantially above the typical, baseline qualifications needed to work as a Software Developer. Similarly, a Software Developer who satisfies the regulatory definition of "exceptional ability" would be, ipso facto, more highly skilled than the typical entry-level-worker in that occupation. This pattern holds for most of the top occupations into which PERM applications fall.[125]

By contrast, EB-3 immigrants—who may qualify as "skilled workers" (requiring at least two years of training or experience) or "professionals" (holding a bachelor's degree)—do not necessarily exceed the baseline qualifications for many of these occupations to the same degree as EB-2 workers. For example, in occupations where a bachelor's degree is the typical requirement, EB-3 professionals align more closely with the median qualifications described in the OOH, while EB-3 skilled workers may fall below that threshold in some cases. Accordingly, while the Department's methodology accounts for differences in education and experience across visa categories, prevailing wage levels for EB-3 workers should reflect that these workers are not uniformly as specialized as EB-2 workers, even though they must still meet statutory requirements and should not be paid wages that undercut similarly employed U.S. workers.

Accordingly, because EB-2 workers are required to possess qualifications that exceed those of the average worker in these occupations, it is appropriate to set their

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[123] Employment and Training Administration, Office of Foreign Labor Certification, Permanent Employment Program – Selected Statistics, Fiscal Year (FY) 2024, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/PERM_Selected_Statistics_FY2024_Q4.pdf.
[124] Bureau of Labor Statistics, Occupational Outlook Handbook, Software Developers, available at https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm.
[125] See Office of Foreign Labor Certification, Permanent Labor Certification Program—Selected Statistics, FY 24, available at https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/PERM_Selected_Statistics_FY2024_Q4.pdf.

prevailing wage levels higher on the wage distribution to reflect their advanced education, experience, and skill.

In sum, the eligibility criteria established by the INA for most of the immigrant and nonimmigrant programs to which the Department's prevailing wage levels apply set a higher baseline for the minimum qualifications an alien must possess than the minimum qualification requirements that exist for U.S. workers generally in most of the occupations in which these aliens most commonly work. The H-1B, H-1B1, E-3, and EB-2 classifications are for workers with specialized knowledge and skills and/or advanced degrees.[126] Because the prevailing wage levels should take into account the experience, education, and level of supervision of occupational classifications, to ensure that those prevailing wage rates are an appropriate wage floor for positions that require specialized knowledge and skills and/or advanced degrees, the prevailing wage rates should be formulated based on the wages paid to workers who similarly possess specialized knowledge and skills in their occupations. Given that not every worker in a given OEWS occupation is likely to meet that standard, and that workers at the lower end of the wage distribution are also likely to be the workers with the lowest levels of education and experience, the Department has determined it is appropriate to discount the lower portion of the OEWS distribution in setting the wage levels. The Department should instead identify where within the distribution workers are to be found who possess the same kinds of specialized education and experience possessed by aliens working in the H-1B, H-1B1, E-3, and EB-2 classifications. The wages paid to those U.S. workers can serve as the basis for appropriately adjusting the prevailing wage levels to ensure the employment of alien workers does not adversely affect the wages and job opportunities of U.S. workers. Although the EB-3 category is not included in this analysis because its

[126] The Department notes that its assessment of the appropriateness of adjusting the prevailing wage levels in the manner described by this rule with respect to the EB-3 classification is governed by distinct considerations, which are described more fully below.

minimum qualifications for skilled workers or professionals with a bachelors' degrees do not uniformly exceed the baseline requirements for many occupations, the Department notes that some EB-3 workers may also qualify for H-1B, H-1B1, or E-3 status, and vice versa. For this reason, and because EB-3 accounts for a small share of PERM applications, the Department applies the same prevailing wage structure to EB-3 to avoid creating incentives for employers to select visa categories based on lower wage thresholds rather than legitimate business needs.

The Department recognizes that applying a unified prevailing wage structure may result in higher wage requirements for some EB-3 positions that do not require the same level of education or specialization as H-1B or EB-2 roles; however, particularly given the prevalence of higher skilled workers in H-1B and PERM, maintaining a consistent wage framework across programs is necessary to prevent program shopping and to uphold the statutory requirement that alien workers be paid at least the prevailing wage for similarly employed U.S. workers, particularly in occupations where job duties and responsibilities may overlap despite differing formal entry requirements.

3. Adverse Effects of Current Prevailing Wage Levels

This section evaluates the comprehensive analysis that the Department has undertaken to understand, assess, and evince the deleterious effects that the current prevailing wage methodology has had on U.S. workers' wages and working conditions. This analysis includes an extensive review of the economic and programmatic data, qualitative evidence consisting of reports and investigations into the H-1B program, and litigation. Based on the evidence, the Department believes that the current prevailing wage methodology sets prevailing wages at levels that may not adequately reflect the Department's statutory requirements.

a. Economic Analysis of Adverse Effects on the Wages of U.S. Workers

As one research organization noted in a recent study of the H-1B program, "[t]he evidence strongly suggests that the H-1B program is not working as intended."[127] The study pointed out that "in certain occupations, H-1B holders earn significantly less than their American counterparts." The Department's data also indicates that the majority of H-1B positions are concentrated in the lower wage tiers. Sixty-three percent of certified LCAs in FY 2024 were for positions classified at wage levels I and II—levels typically associated with entry-level roles.[128] This wage distribution raises concerns that the program is being used to fill mostly lower-paid positions and not serving its intended purpose of protecting U.S. workers from adverse effects by preventing employers from using alien workers to undercut wages and job opportunities for American workers.[129]

The Department conducted a comprehensive analysis comparing certified LCA wages[130] to OEWS data,[131] matched by SOC code, state, and year. This analysis is documented below, in Section II.C.1. This comparison revealed that the average wage offered to H-1B workers was approximately $10,191 lower than the OEWS average wage for workers for similarly classified occupations. This differential may reflect a range of factors, including experience levels, geographic variation, and employer-specific compensation practices. The disparity is even more pronounced in computer-related occupations, where the average wage gap was $10,972. These findings suggest that employers are leveraging the H-1B program to access a lower-cost labor pool, even in

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[127] Frei, Alexander P., *Rethinking the H-1B Visa Program: A Data-Driven Look at Structural Failures and the High-Skill Illusion*, Heritage Foundation (Aug. 8, 2025), available at https://www.heritage.org/border-security/report/rethinking-the-h-1b-visa-program-data-driven-look-structural-failures-and#.

[128] Office of Foreign Labor Certification, H-1B Temporary Specialty Occupations Labor Condition Program—Selected Statistics in FY 2024, available at https://www.dol.gov/agencies/eta/foreign-labor/performance.

[129] *See* 8 U.S.C. 1101(a)(15)(H)(i)(b); 8 U.S.C.1184(i)(1)(A) (describing the term "specialty occupation" as requiring "theoretical and practical application of a body of highly specialized knowledge" among other educational requirements.

[130] *See generally* Office of Foreign Labor Certification, H-1B Temporary Specialty Occupations Labor Condition Program—Selected Statistics, available at https://www.dol.gov/agencies/eta/foreign-labor/performance.

[131] *See generally* U.S. Bureau of Labor Statistics, *Occupational employment and wage statistics* (BLS Occupational Employment Statistics), available at https://www.bls.gov/oes/.

occupations that nominally require high levels of skill and education. This underpayment further supports the Department's conclusion that the current prevailing wage structure does not adequately reflect market wages and is in urgent need of reform. These same labor market dynamics are relevant to the PERM program, where underpayment of alien workers can similarly distort hiring incentives and erode labor standards. Using the same wage levels in both programs ensures that employers cannot use the permanent labor certification process to institutionalize wage disparities that originated in the temporary visa context.

Additionally, the Department's current prevailing wage methodology permits employers to classify a substantial share of H-1B positions, particularly in high-demand occupations such as software development, as "entry-level." Because the current methodology places Level I wages near the bottom of the OEWS distribution, which includes workers who do not possess the specialized education and experience required for H-1B eligibility, Level I wages are often set far below what specialized H-1B workers and comparably qualified workers would earn. Compounding this issue is the existence of a large pool of alien workers willing to accept lower wages because the cost of living in their home countries is substantially lower and other factors that make U.S. wages attractive even at discounted rates. This dynamic exerts downward pressure on wages for U.S. workers, as employers can classify H-1B roles as entry-level and thus pay wages that do not reflect the qualifications of the alien worker. Moreover, if the same employer hires all similarly qualified workers at the entry-level prevailing wage, then the "actual wage paid" by the employer would be the same as the prevailing wage. This structural flaw creates a systemic cost advantage for hiring H-1B workers over domestic talent, effectively enabling employers to substitute lower-paid alien workers for U.S. workers and institutionalizing wage arbitrage under the guise of legal compliance.

The adjustment to Level IV, in turn, was based on statistical modeling of OEWS wage distributions and is intended to correct for the current methodology's mismatch of mid-level and high-level earners with prevailing wage levels that did not properly compare them to U.S. earners of the same experience, education and level of supervision. This caused dilution of the wage standard for top-tier talent and failed to reflect the wages of workers with the greatest levels of education, experience, and responsibility. By revising the Level IV wages to better reflect the actual compensation of U.S. workers with equivalent qualifications, the Department aims to restore labor market fairness and ensure that the employment of alien workers does not suppress wages or displace U.S. workers.

b. Other Relevant Evidence, Reports, Investigations, and Litigation Demonstrating Adverse Effects of Current Prevailing Wages

The Department's analysis is grounded in its own administrative data and statutory responsibilities. However, other evidence, including investigative reporting and academic research, has supported many of the Department's conclusions.

Academic research indicates that the influx of low-cost alien workers into a labor market suppresses wages, and this effect increases significantly as the number of alien workers increases. In particular, some empirical research, when inputted into a rough simulation, suggests that a substantial increase (more specifically, a 10 percent increase) in the labor supply due to the presence of alien workers could reduce the wages of the average U.S. worker by 3.2 percent, a rate that grew to 4.9 percent for college graduates.[132] 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

[132] Borjas, George J. (2003). "The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market." The Quarterly Journal of Economics, 118(4), 1335–1374.

level. This NPRM proposes to recalibrate wage levels to better reflect the education, experience, and responsibility required for H-1B positions, thereby reducing the opportunity for wage arbitrage.

The Department has also reviewed evidence indicating that the intent of the H-1B "actual wage" requirement can be undermined when end-clients obtain labor through outsourcing or staffing firms (sometimes called "job shops"). In such arrangements, the H-1B employer of record is the outsourcing firm, not the end-client; consequently, the "actual wage" analysis compares the H-1B worker's pay only to other workers at the outsourcing firm—who may be predominantly workers with H-1B visas and paid at or near prevailing-wage floors—rather than to the higher-paid, similarly employed U.S. workers at the end-client company. Government reports and public reporting have documented this dynamic and show it can facilitate large pay gaps between outsourced H-1B workers and client-site employees performing substantially similar functions.[133] Although this rulemaking would not directly change how "actual wage" determinations are applied in third-party placement scenarios, by raising prevailing wage levels it would increase the wage floor and, in turn, reduce the magnitude of these gaps in cases where outsourcing companies pay at or near the prevailing wage. Another report revealed that certain outsourcing firms exploited the H-1B registration system by submitting multiple registrations for the same beneficiaries, thereby gaining an unfair advantage in the

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[133] *See* U.S. Gov't Accountability Office, *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* 20 (2011), https://www.gao.gov/assets/320/314501.pdf, at 52–56 (raising concerns that the H-1B program lacks an explicit mechanism for holding employers accountable when they obtain H-1B workers through a staffing company); Ron Hira and Daniel Costa, Economic Policy Inst., The H-1B Visa Program Remains the "Outsourcing Visa" (Mar. 31, 2021), https://www.epi.org/blog/the-h-1b-visa-program-remains-the-outsourcing-visa-more-than-half-of-the-top-30-h-1b-employers-were-outsourcing-firms/ (noting that "H-1B outsourcing companies . . . replace incumbent U.S. workers with H-1B workers and typically pay their H-1B workers the lowest wages permitted by law, far below market wage rates") and that large companies have "[laid] off hundreds of their well-paid employees and contract[ed] with major outsourcing firms . . . to replace those employees with H-1B workers who were paid salaries that were tens of thousands of dollars less").

selection process.[134] This report demonstrated how some companies would manipulate the lottery by flooding the system with duplicate or coordinated entries for individual workers, often through affiliated entities or shell companies. This practice significantly increased their odds of selection while disadvantaging employers who followed the rules and submitted a single registration per candidate. The result was a distorted allocation process that undermined the integrity of the H-1B program and enabled a small group of companies to cannibalize access to scarce visa slots. Although registrations do not represent actual employment and do not capture wages, evidence that the system can be gamed—even outside the Department's direct purview—despite the availability of ample entry-level U.S. workers suggests that some employers view H-1B workers as a lower-cost alternative. This underscores the importance of ensuring that prevailing wage levels are set appropriately to eliminate incentives for wage arbitrage and protect U.S. workers from being undercut.

Between 2019 and 2025, a significant share of LCAs were filed in technology-related occupations, particularly software engineering roles. During this same period, major technology firms and outsourcing companies that are among the largest users of the H-1B program also conducted large-scale layoffs of U.S. workers. A 2023 study by 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 34,000 H-1B workers.[135] And recently, in a lawsuit brought by a class of current and former employees of a significant employer of H-1B workers, a federal jury found that the employer's

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[134] Bloomberg News, Outsourcing Firms Monopolize H-1B Visa Program, BLOOMBERG (Aug. 13, 2024), available at https://unity-connect.com/our-resources/news/bloomberg-reveals-outsourcing-firms-monopolize-h-1b-visa-program/.

[135] Daniel Costa and Ron Hira (2023), *Tech and outsourcing companies continue to exploit the H-1B visa program at a time of mass layoffs,* Economic Policy Institute (Apr. 11, 2023), available at https://www.epi.org/blog/tech-and-outsourcing-companies-continue-to-exploit-the-h-1b-visa-program-at-a-time-of-mass-layoffs-the-top-30-h-1b-employers-hired-34000-new-h-1b-workers-in-2022-and-laid-off-at-least-85000-workers/.

reliance on employees with H-1B status unlawfully discriminated against non-Indian and non-South Indian employees.[136]

And while the data indicate that H-1B workers are rapidly replacing U.S. workers, especially in STEM-related fields, recent U.S. graduates in computer science and engineering are facing elevated unemployment and underemployment rates. Unemployment rates for recent graduates in these fields were 7.5% and 6.1%, respectively, with underemployment rates exceeding 17%.[137] For example, employment for domestic software developers aged 22–25 declined by nearly 20% compared to its peak in late 2022, suggesting that qualified U.S. workers are struggling to access opportunities in sectors heavily reliant on H-1B labor.[138]

This trend is particularly pronounced in the technology sector, where alien workers plays an outsized role in shaping labor market dynamics.[139] A 2025 report found that two-thirds of Silicon Valley tech workers are foreign-born, underscoring the extent to which the region's workforce is shaped by immigration and the potential for wage-setting distortions in occupations with high concentrations of H-1B workers.[140] The pool of U.S. workers with relevant credentials has grown rapidly. Bachelor's attainment is

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[136] *See Palmer v. Cognizant Tech. Sols. Company*, No. 17-cv-6848, 2025 WL 3154720 (C.D. Cal. Oct. 6, 2025). The jury found that the employer had "engaged in a pattern or practice of intentional discrimination against" both "non-South Asian employees on the basis of race who were terminated from the bench," and "non-Indian employees on the basis of national origin who were terminated from the bench." *Id.* In a subsequent ruling, the court found, based on expert evidence, that "non-South Asians were approximately seven times more likely to be subject to an involuntary termination." *Palmer v. Cognizant Tech. Sols. Company*, No. 17-cv-6848, 2025 WL 3496682, 24 (C.D. Cal. Dec. 5, 2025). The analysis also showed that "non-South Asian and non-Indian employees were 8.4 more likely to be terminated from the bench than South Asian and Indian employees." *Id*. at 27. The court also found that Cognizant replaced U.S. employees with visa-holding, South Asian employees "with a lower grade and experience." *Id*. at 31.
[137] Federal Reserve Bank of New York, The Labor Market for Recent College Graduates, available at https://www.newyorkfed.org/research/college-labor-market. Latest release: February 20, 2025, based on data from 2023. https://www.newyorkfed.org/research/college-labor-market#--:explore:unemployment
[138] Erik Brynjolfsson, Bharat Chandar, and Ruyu Chen, *Canaries in the Coal Mine? Six Facts about the Recent Employment Effects of Artificial Intelligence,* Stanford University (Aug. 26, 2025) at 9, available at https://digitaleconomy.stanford.edu/wp-content/uploads/2025/08/Canaries_BrynjolfssonChandarChen.pdf.
[139] Based on the LCA Performance Data, which is cited throughout this NPRM, over 50% of the LCA's certified by the Department in FY 2024 were for Computer and Information Technology occupations.
[140] Joint Venture Silicon Valley, "2025 Silicon Valley Index," https://jointventure.org/publications/silicon-valley-index?mc_cid=fbf9996b7f&mc_eid=4049bbd06a; Ethan Baron, "Two-thirds of Silicon Valley tech workers are foreign-born, new report says," SiliconValley.com, March 11, 2025. https://www.siliconvalley.com/2025/03/11/two-thirds-of-silicon-valley-tech-workers-foreign-new-report.

higher among younger cohorts, and Computer and Information Sciences (CIS) degree completions more than doubled over the past decade—from about 55,000 in 2013–2014 to roughly 108,500 in 2021–2022.[141] Including Master's (24,514 to 51,338 in the same period) and Doctoral (1,982 to 2,790 in the same period) degrees, the number of degrees conferred in the U.S. increased from 81,767 to 162,658, nearly doubling during that time. Another factor, related to some of the layoff activity of larger technology firms in recent years, has been the impact of generative AI, which a number of early studies indicates is decreasing demand for lower-level technology workers.[142] So, while the potential supply of workers in occupations that are central to the programs affected by prevailing wages have increased, almost doubling since 2014, dramatic improvements in technology have and will continue to decrease demand, especially at the entry-level, for workers in these fields. Indeed, ADP, a leading source of payroll data, reported that employment of software developers, the single largest occupational category in the H-1B system, was lower in 2024 than it was in 2018.[143] ADP data show that employment of software developers peaked in 2022 but declined sharply thereafter, falling below 2018 levels by 2024.[144]

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[141] National Center for Education Statistics, Digest of Education Statistics, Table 325.35: Bachelor's Degrees Conferred by Postsecondary Institutions, by Field of Study: 1970–71 through 2021–22, https://nces.ed.gov/programs/digest/d23/tables_1.asp?current=yes (last visited Jan. 2, 2026). Data include all graduates, including international students who may later enter the H-1B program. Thus, a portion of the observed growth reflects international STEM graduates, whose numbers have increased significantly over the past decade.

[142] *See e.g.*, Tomlison, Kiran, Jaffe, Sonia, Wang, Will, Counts, Scott, and Siddharth, Suri, *Working with AI: Measuring the Occupational Implications of Generative AI* (finding that Computer and Mathematical occupations had the highest "AI applicability score," a measure which describes "if there is non-trivial AI usage that successfully completes activities corresponding to significant portions of an occupation's tasks.") https://www.microsoft.com/en-us/research/publication/working-with-ai-measuring-the-occupational-implications-of-generative-ai/; Brynjolfsson, Erik, Chandar, Bharat, Chen, Ruyu, *Canaries in the Coal Mine? Six Facts about the Recent Employment Effects of Artificial Intelligence* (finding "substantial declines in employment for early-career occupations most exposed to AI, such as software development and customer support" among other conclusions) https://digitaleconomy.stanford.edu/wp-content/uploads/2025/08/Canaries_BrynjolfssonChandarChen.pdf.

[143] Nezaj, Jeff "The rise—and fall—of the software developer" https://www.adpresearch.com/the-rise-and-fall-of-the-software-developer/.

[144] Ibid.

Another factor that shapes the nature of the labor market for workers who are subject to the prevailing wages at issue in this NPRM is their proclivity, due to being concentrated in technology or management occupations, to have more opportunities for remote work. According to BLS data as of September 2025, while 22.5% of workers reported working some or all hours remotely, Management, professional and related occupations reported 36.5%, while Computer and mathematical occupations reported 65.7%.[145] By contrast, Farming, fishing and forestry occupations reported a telework rate of 5.7%, far lower than average. With respect to other Specialty Occupations, the likelihood of teleworking strongly correlates with educational attainment, indicating in general that workers with higher levels of education—such as those in management, professional, and technical fields—are more likely to work in jobs that permit telework.[146] Teleworking increases the geographical scope of a particular workplace in which a worker can work, which the Department believes contributes not only to guest workers in these programs being able to seek employment at a broader array of employers, but also contributes to labor market mobility on the part of U.S. workers, which makes for more liquid and efficient labor market than in workplaces with fewer telework opportunities.[147]

The data are not an exhaustive analysis of all of the impacts of guest worker programs on the U.S. workforce.[148] They do demonstrate the prevalence of guest workers, and indicia of how this prevalence may be resulting in adverse impacts on the U.S. workforce, in addition to the extensive analysis that the Department has conducted. In turn, this suggests that U.S. workers are vulnerable to a prevailing wage methodology

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[145] Labor Force Statistics from the Current Population Survey, BLS, https://www.bls.gov/web/empsit/cpseea42.htm.
[146] Telework Trends, BLS. https://www.bls.gov/opub/btn/volume-14/telework-trends.htm.
[147] *See e.g.*, Ravalet, Emmanuel, Rerat, Patrick, *Teleworking: Decreasing Mobility or Increasing Tolerance of Commuting Distances?*, https://www.jstor.org/stable/45237778.
[148] *See also*, *Macks USA, Inc. v. United States Dep't of Lab.*, No. 23-CV-7476 (JGK), 2024 WL 4728902, at *12 (S.D.N.Y. Nov. 8, 2024) (affirming award of over $100,000 of back wages to an employee who was improperly denied wages due to being "benched").

that is set too low, or set without being aligned with labor market data, as the Department contends the current methodology is.[149] Without regulatory intervention, similar instances will continue to erode the integrity of the labor certification process and undermine public confidence in the Department's stewardship of the H-1B and PERM programs.

In short, contrary to the H-1B program's goals, prevailing wage levels that, in many cases, do not accurately reflect the wages of comparable U.S. workers have permitted some firms to displace, rather than supplement, U.S. workers with H-1B workers. While allowing firms to access high-skilled workers to fill specialized positions can help U.S. workers' job opportunities in some instances, particularly when there are actual labor shortages in a certain industry or occupation, the benefits of this policy diminish significantly when the prevailing wage levels do not accurately reflect the wages of similarly employed workers in the U.S. labor market. 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.

These concerns are not new. Congress has long recognized the need to protect U.S. workers from adverse effects associated with the employment of alien workers, as reflected in the statutory language of the Immigration and Nationality Act (INA). *See* 8 U.S.C. 1182(a)(5) (labor certification and qualifications for certain immigrants), 1182(n) (labor condition application), 1182(p)(2) (professional athletes), 1182(t) (nonimmigrant professionals). The Department has a statutory obligation to ensure that prevailing wage determinations are consistent with this mandate, and therefore this rulemaking is a

[149] Employers seeking to employ H-1B workers must attest on the Labor Condition Application (Form ETA-9035) that the employment of the foreign worker "will not adversely affect the wages and working conditions of workers in the United States similarly employed." 8 U.S.C. § 1182(n)(1)(A)(ii); *see also* 20 CFR § 655.731(a)(1).

necessary step toward restoring balance in the labor market and ensuring that alien workers are used to supplement—not displace—the domestic workforce.

The NPRM is based on a substantial body of economic and administrative data, including labor market trends, wage survey data, and evidence of program outcomes that the Department believes evince adverse outcomes towards U.S. workers. It reflects a reasoned policy judgment that the current wage structure does not adequately reflect the wages paid to U.S. workers similarly employed in comparison to the wages paid to H-1B workers, and concludes that reform is necessary to fulfill the Department's statutory mandate. After careful consideration of these data, and the potential economic impacts of the proposed changes, the Department has developed and now proposes a methodology that would better protect U.S. workers from unfair competition created by the importation of alien workers, as required by law. Indeed, the H-1B crisis has prompted the Equal Employment Opportunity Commission to issue guidance warning employers that discriminating *in favor of* H-1B applicants or against American-born workers is illegal.[150]

This rulemaking is designed to ensure that the H-1B and related programs operate in a manner that is fair, transparent, and protective of U.S. workers, while still allowing employers to access alien workers where appropriate wages are paid.

C. Identifying the Appropriate Prevailing Wage Levels

1. Revisions to the Existing Methodology

The Department proposes to revise the existing methodology used to determine prevailing wage levels in the H-1B, H-1B1, E-3, and PERM programs. Specifically, the Department proposes adjusting the wage percentiles used to define Levels I and IV and

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[150] Equal Employment Opportunity Commission, Discrimination Against American Workers Is Against The Law, available at https://www.eeoc.gov/discrimination-against-american-workers-against-law. This guidance notes that discrimination in favor of visa guest workers (and against U.S. workers) is illegal, and can include discriminatory job advertisements (such as "H-1B preferred" job openings), disparate treatment (such as subjecting American-born workers to higher rates of termination for staying on "bench" status than visa guest workers), while observing that common businesses reasons such as customer or client preference, lower cost of labor, and beliefs regarding "work ethic" do not excuse an employer's decision to hire foreign workers over U.S. workers.

refining the use of BLS data to ensure that prevailing wages more accurately reflect the wages paid to U.S. workers similarly employed to ensure that the employment of alien workers does not adversely affect the wages and working conditions of U.S. workers.

In order to determine the prevailing wage percentiles that most closely satisfy the statutory requirements, the Department conducted an extensive statistical labor market analysis using historical data involving the immigrant and non-immigrant guest worker programs that are the subject of this NPRM. At a high level, the Department developed the proposed prevailing wage levels to align workers in the relevant programs with comparable labor market outcomes for the U.S. workforce as a whole. As part of its analysis, the Department finds a wide (over $19,000 per worker on average) discrepancy between the wages earned by U.S. workers in the same occupations and locations and the prevailing wage levels assigned to corresponding LCA applicants. The Department's proposed adjustments would eliminate this gap using statistically grounded recalibration of wage percentiles.

The Department proceeded in three steps: (1) to analyze aggregate LCA data to understand the prevailing wages, actual wages, and occupational composition of H-1B workers over the last five years; (2) to compare LCA data with OEWS data, the most reliable and comprehensive publicly available data that reflects overall labor market compensation on an occupational basis, to determine the going wage of occupations for U.S. workers adjusted for region; and (3) to use this quantitative analysis to determine wage levels that would re-align the H-1B wage levels with corresponding U.S. workers. At this final step, the Department also relied on qualitative evidence and its long-standing expertise administering these programs, particularly in setting Wage Levels I and IV.

a. Step 1 – The Department's Analysis of LCA Data

As has been described above, the first step for the H-1B petition process (and for other guest worker programs, although this statistical analysis focused exclusively on H-

1B petitions, the most numerous of all programs that use LCAs in terms of both number of LCAs filed and number of individuals employed) is for the employer to submit an LCA to the Department. These LCAs are the best data of labor market information for what prevailing wage applies to any particular H-1B employee, what wage they are offered by their employer, and the SOC code that describes their occupation. In the aggregate, they are the best data source for labor market information regarding H-1B occupations. These LCAs are made under penalty of perjury[151] by the hiring entity, who must attest that "to the best of my knowledge, the information contained therein is true and accurate." For purposes of this analysis, the Department used all LCA data for FY2020-2025.[152]

The Department took extensive measures to ensure that the LCA data was useable and reliable. These measures included various steps to clean the data, such as removing trailing annotations and any decimal artifacts introduced during earlier processing, trimming whitespace, and dropping entries that clearly did not match the SOC 6-digit code structure. For example, in one instance, a SOC code was entered as "151252"; this was corrected to "15-1252." The Department discarded a handful of data points that had clear errors.

The LCAs contain several data points that the Department used in its analysis. These include: (1) the SOC (O*NET/OEWS Code)[153]; (2) Number of Workers[154]; (3)

[151] LCA Section J. Additionally, the employer must "develop sufficient documentation to meet its burden of proof with respect to the validity of the statements made in its LCA and the accuracy of information provided." LCA Section J(B).
[152] For FY 2025, the Department used all available data, which at the time of this NPRM included but ended with Q3.
[153] LCA Box B(2).
[154] LCA Box F(a)(1). Note that, as explained above, an LCA applicant can file an LCA on behalf of multiple putative H-1BH-1B employees.

State/District/Territory[155]; (4) Wage Rate Paid to Nonimmigrant Workers[156,157]; (5) the Prevailing Wage Rate[158]; (6) Wage Level.[159] As is standard practice in any statistical analysis, the Department eliminated a small number of outliers,[160] and observations that had missing data.

To illustrate the Department's process, consider an example Labor Condition Application (LCA) for a Data Scientist. From each LCA, the Department extracted key data elements, including the standard occupational code (SOC), number of workers, state of employment, offered wage, prevailing wage, and wage level. All wage values were standardized to annual amounts for consistency. The Department applied this process across more than 3 million LCAs filed between FY 2020 and FY 2025, cleaning the data to remove errors and outliers (e.g., wages below $20,000 or above $500,000) and ensuring accurate SOC coding. This standardized dataset formed the basis for the statistical analysis described below.

In this instance, the State/District/Territory would have been coded as Florida, based on Box 8; the Wage Rate Paid would have been coded as $119,028 from Box 10; and the Prevailing Wage Rate would have been coded as $75,691 from Box 11.[161] This was done for over 3 million LCA's filed during the time period of FY2020-2025.

Using these data, the Department calculated that the average prevailing wage, for all LCAs from FY2020-2025, was $111,717. The Department also calculated that the

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[155] LCA Box F(a)(8).
[156] LCA Boxes F(a)(10) and 10a. The field on the LCA for the wage rate offered to the nonimmigrant worker has a field labeled "From" and "To" with "From" being the lower range and "To" the upper range. Since filling out the upper range is optional, only approximately 50% of LCAs have data in that field. Therefore, the Department used the number indicated in the "From" field as the sole datapoint from F(a)(10).
[157] To create a single comparable wage variable, the Department converted all forms of payment into annual pay using standard period multipliers. The Department performed this adjustment as needed for both the offered wage and the prevailing wage.
[158] LCA Boxes F(a)(11) and 11a.
[159] LCA Box F(13)(a).
[160] The Department removed observations that reported wages smaller than $20,000 and larger than $500,000.
[161] The Wage Level, II, is not visible in this image due to size limitations.

average wage rate paid to the beneficiaries of the same LCAs was $121,908.[162] In other words, the average LCA-program employee was paid an actual wage, and thus commanding, a $10,191 premium over the prevailing wage level offered—a gap that indicates that the prevailing wage is set below the market value of comparable U.S. workers.

b. Step 2 – Comparing the LCA Data to General Labor Market Data

The Department next compared the compensation paid to the beneficiaries of H-1B applications with the compensation paid to equivalent U.S. workers. To do this, the Department conducted a statistical analysis comparing the above LCA data with data for the U.S. workforce in general, narrowed down to the same occupation and geographical region.

The best available data source for benchmarking the U.S. workforce is the OEWS,[163] which as explained above, is the most comprehensive and consistently administered analysis of labor market data that is indexed to occupational codes. The OEWS data reflects labor market conditions for the U.S. workforce as a whole, and not just non-immigrant programs. For each occupation—classified using the same SOC codes that appear in LCAs—the OEWS reports mean wages, which can be adjusted for geographic region, including state.

For example, for Software Developers (SOC Code 15-1252), which is the most common SOC code for which an LCA was sought between FY2020-2025, the average wage in California is $170,910; for Alabama, it is $113,020, and for Wisconsin, it is

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[162] The Department acknowledges that LCA applicants must go through further processing, notably, in many cases the H-1B lottery, before they receive a visa, and that many LCA's ultimately do not receive work visas. However, the Department does not believe that this distinction matters for purposes of the analysis that it conducted. Many LCAs are for H-1B applicants who are cap-exempt, which means that the observation should be largely consistent with the ultimate visa grants. Regarding non-cap-exempt H-1B applicants, the Department has no reason to assume that the distribution of cap-exempt employees is different from the distribution of non-cap-exempt LCAs, but welcomes comment if any member of the public has data that indicate a significant discrepancy between these numbers.

[163] The nature and relevant history of the OEWS is explained in greater detail in Section I.D.

$103,360.[164] As was explained above, the LCAs also report SOC Code and state—the same data that any user can input into the OEWS system to receive an average wage for workers in that occupational classification and location.

To compare LCA data and the OEWS data, the Department coded each LCA with the corresponding mean wage reported by the OEWS, for the same occupation and state, to create an "apples-to-apples" comparison. So, for example, if a given LCA was for a Software Developer in the state of Alabama for FY2024, they would have been coded with $113,020–the average annualized salary for the same occupation in the same place. This coding was done, in this exact same way, to millions of LCAs.

To return to the previous LCA example, the LCA was coded as a Data Scientist (SOC Code 15-2051), and was located in Florida, FY 2024. In the Department's analysis, this would have been coded using the corresponding OEWS wage rate for the same SOC Code, state, and year, for an average wage of $105,820.[165]

While some LCA applicants' employees earned more and others less than the OEWS mean, the Department initially assumed these differences would offset across Wage Levels I–IV. In theory, if LCAs reflected a balanced distribution of job levels, the average offered wage should approximate the OEWS average for the occupation. However, LCAs are disproportionately concentrated at Level I and Level II—the lowest wage tiers—which are both set significantly below the median or average wage. This concentration is not unexpected, as employers often classify positions at these levels, and H-1B workers tend to be placed in roles designated as entry-level or lower-tier positions. In fact, 63 percent of LCAs certified in FY 2024 were at Level I or Level II, according to

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[164] These data are publicly accessible at https://data.bls.gov/oesprofile/ and reflect data for May 2024, the most recently available data as of the time of this NPRM. For purposes of conducting its analysis comparing these data to the FY2020-2025 LCA data, the Department obtained historical BLS data and compared the BLS data of a specific year to the corresponding year wherein the LCA was received. This has led to an overall underestimate of the gap between compensation received by immigrants and non-immigrants bound by the prevailing wages, and U.S. workers, because it effectively does not account for inflation, as many of these workers do not commence work until the next fiscal year.

[165] https://www.onetonline.org/link/localwages/15-2051.00?st=FL.

the Department's LCA performance data.[166] Because these levels are far below the OEWS mean, the aggregate wages of H-1B workers skew lower than the overall occupational average. While this rule does not alter how employers classify job levels, raising prevailing wage thresholds will help ensure that wage levels better reflect the qualifications required for specialty occupations and reduce incentives to select the lowest permissible wage level.

However, the average of the mean OEWS occupational salaries, across the LCAs, was $130,219, which is slightly over $9,000 higher than the wage rate paid, and over $19,000 higher than the prevailing wage rate based on the current wage levels. This $130,219 represents the average of all salaries by occupation, state, and fiscal year, that match with the millions of LCAs in the Department's data set. As is shown later, it was used as the Department's Benchmark Value[167] for setting the prevailing wage levels in Step 3 of the analysis.

c. Step 3 – Using the Labor Market Analysis to Revise the Prevailing Wage System

Given the existence of a variety of skill levels, occupations, and regions, the significant gap between the Benchmark Value and the average prevailing wage and wage paid data should not exist unless the LCA-program itself were causing a discrepancy. In other words, the average U.S. worker in the same occupation and region is commanding a nearly $19,000 wage premium above what the similarly situated non-U.S. worker is required to be paid using the prevailing wage system, which, in many of the non-immigrant programs, such as the H-1B program, are restricted to individuals seeking to work in specialty occupations that should perhaps be commanding *higher*, not *lower* wages.

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[166] See U.S. Department of Labor, Office of Foreign Labor Certification, Labor Condition Application Performance Data, FY 2024, available at https://www.dol.gov/agencies/eta/foreign-labor/performance.
[167] This value is referred to as the Benchmark Value in the next subsection.

The Department believes that these significant discrepancies between labor market outcomes of U.S. workers, represented by the Benchmark Value, and the labor market outcomes of LCA-program employees specifically, as represented by the actual wages paid, and the prevailing wages that apply, indicates both the existence of a problem—that the wage discrepancy will adversely impact the wages of similarly employed U.S. workers—and the proposed solution—which is to revise the prevailing wage structure to be more in line with the average wages earned by equivalent U.S. workers.

In order to align LCA-program wage rates with the general U.S. labor market, the Department seeks to set a prevailing wage level that yields an average, using the same mathematical approach as described above, that would be approximately the same as the average of the mean salaries of the typical LCA-program occupations. Using the Department's proposed revised prevailing wage methodology, which sets Wage Level I from the 17th to the 34th percentile; Wage Level II from the 34th to the 52nd percentile; Wage Level III from the 50th to the 70th percentile; and Wage Level IV from the 67th to the 88th percentile, the Department achieves this alignment, arriving at the Benchmark Value—and thus, approximately the same as if the Department drew a random sample of similarly-situated U.S. workers.

To identify these levels, the Department created a statistical model, using the known composition of the LCA-programs in terms of the same factors described above: wages, locations, and occupations, and used well-known statistical methods to set prevailing wage levels that would result in an average prevailing wage level that was equal to the average of the mean salaries assuming the same composition as the LCA-program. Put differently, the model answered the following question: if the same employers with the same occupations, state locations, and wage levels, were to apply for the LCA-programs in the next fiscal year, as they did in the most recent fiscal year, what

prevailing wage levels are needed to ensure that the average prevailing wage is the same as the Benchmark Value?

i. The Mathematics Behind Step 2 of the Department's Analysis

Numerical methods are computational techniques used to find approximate solutions to complex mathematical problems that lack closed-form solutions. For example, the equation (x + y = 1) cannot be solved uniquely, as (x) and (y) can take infinitely many values that satisfy the equation (e.g., (x = 0.5, y = 0.5) or (x = 1, y = 0), etc.).[168] Similarly, the loss function, which reflects the difference between the predicted mean wage and the target mean wage W_{target}, is defined as:

$$\mathcal{L}(p_1,p_4) = |\frac{1}{N}\sum_{i=1}^{N} W_i(p_1,p_4) - W_{\text{target}}|.$$

Here, $W_i(p_1,p_4)$ is the interpolated wage for the (i)-th row based on the assigned percentiles, and (N) is the total number of rows.

The optimization uses the Broyden–Fletcher–Goldfarb–Shanno algorithm method, a gradient-based algorithm, to minimize the loss $\mathcal{L}(p_1,p_4)$. Constraints are applied to ensure that:

$$10 \leq p_1 < p_4 \leq 90 \text{ and } p_4 - p_1 \geq 10.$$

The initial values for (p_1) and (p_4) are set to 35 and 90,[169] respectively. These were approximately the values that the Department believed would achieve the policy goals for Wage Levels I and IV, respectively, (as discussed below) and also represented

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[168] To approximate these levels, the department combined Limited-memory Broyden–Fletcher–Goldfarb–Shanno, which is a quasi-Newton optimization algorithm with linear interpolation to estimate percentile wage levels (I-IV) that align with a target average wage defined by the data. The algorithm seeks to minimize the difference between the mean wage predicted by the assigned percentiles and the Benchmark Value. The approach exploits the piecewise interpolation of percentile values and the properties of linear optimization. First, each row's wage is predicted based on its reported percentile wage distribution. Using the known percentiles 10, 25, 50, 75 and 90 for each occupation (SOC code), and a given percentile (t) (e.g., 35th percentile for Level I), the wage at (t) is estimated using linear interpolation.

[169] The Department also ran the same simulation with the starting values p_1 and p_2 being set to 17 and 67, which correspond to current Levels I and IV. However, picking these numbers would result in Wage Levels at the 45th, 56th, 66th and 76th percentiles. The Department believes these levels fail to sufficiently differentiate from one another to be useful.

the same values that the Department set in a previous rulemaking. However, 35 and 90 did not create the solution; the solution they created was above the Benchmark Value. Then, the Department applied the Broyden–Fletcher–Goldfarb–Shanno algorithm, which takes an initial "estimate" and repeatedly attempts to match that set of values to the desired solution, until eventually that is reached. After this optimization, the solution yields the optimized wage levels (p_1, p_2, p_3, p_4), corresponding to Levels I-IV, which were 34, 52, 70 and 88, such that the solution approximately achieves the Benchmark Value. The final difference between the predicted mean and the target mean is reported as the result of the optimization.

As discussed below, this solution is not the only set of values that would allow the Department to match the Benchmark Value. The next section discusses the Department's rationale for setting Levels I and IV at the 34th and 88th percentile instead of sliding up or down the wage scale to achieve the Benchmark Value.

ii. The Department's Setting of Wage Level I to the 34th Percentile

As explained above, Wage Levels II and III are set arithmetically as required by the INA; Level II will be calculated by dividing by three, the difference between Levels I and IV, and adding the quotient to the computed value for Level I. Level III will be calculated by dividing by three the difference between Levels I and IV, and subtracting the quotient from the computed value for Level IV. Therefore, the Department effectively has to choose two wage levels: Wage Level I and Wage Level IV.[170]

The Department is proposing to increase Wage Level I from the 17th to the 34th percentile for a variety of reasons. To start, retaining Level I at the 17th percentile would have produced, under the statutory formula described above, a wage-level structure that

[170] The Department notes that, although Wage Levels II and III are arithmetically set by Wage Levels I and IV, that the Department believes that the increases of Wage Levels II and III that this methodology achieves are necessary and appropriate to carry out its statutory requirements for all of the same reasons as are stated below and throughout this NPRM.

was excessively skewed to the right, which would have been less granular, distorted, and less consistent with statutory requirements.[171] More importantly, as the Department has explained in detail in Section II.B, many of the most common occupations in LCA programs, and especially in the H-1B program, frequently report requiring education less than a Bachelor's degree. For example, Computer Systems Engineers/Architects (SOC Code 15-1299.08), which is one of the most commonly applied-for jobs across all LCA programs, is a Job Zone Three job, meaning that "[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree" and that 68% of respondents reported that the occupation required sub-baccalaureate requirements of either an Associate's degree or other post-secondary education.[172] By establishing Wage Level I at the 17th percentile, the current methodology sets a prevailing wage that is directly comparable to individuals who do not work in high-skill positions within that occupational category that are the only ones eligible to use most of the LCA programs.[173]

In addition to these findings, the Department also notes indicia that the relevant labor market is balanced, or perhaps even tilted towards supply of labor rather than shortage. First, the Department notes that the average wages paid versus prevailing wage premium for Wage Level I is particularly high. As shown below in Exhibit 5, while the average prevailing wage set for Wage Level I was $73,804, the average offered wage was

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[171] If the Department sought to increase the prevailing wage rates more than it proposes to do so here, which it believes is justifiable to avoid adverse wage effects on U.S. workers, it would simply opt for an increase in the Wage Level I prevailing wage to preserve a sufficiently differentiated wage level system to permit employers to obtain more granular wage levels that reflect all of the statutory factors.

[172] https://www.onetonline.org/link/summary/15-1299.08.

[173] The Department acknowledges that other common occupations among the LCA-programs, such as Software Developer, have much higher educational requirements. However, the prevailing wages are set for all occupations, and must reflect the qualifications needed for them on an aggregate level. The Department finds that, for all of the reasons stated throughout this rule, that on an aggregate level, among the occupations that are the most significant LCA-program occupations, a significant percentage of these jobs do not require a bachelor's degree and perhaps do not even require the application of a body of "highly specialized knowledge." Thus, these jobs are generally not the kind of positions that should be the basis for comparison against LCA-program workers. The Department also considered but rejected a more granular, occupation-specific approach to setting prevailing wages, because such an approach would be unworkable.

$83,055. This approximately $10,000 gap shows that workers assigned to Wage Level I are commanding very large premiums compared to the assigned prevailing wage—the largest premiums, in fact, by percentage, among the four Wage Levels. Second, the Department notes labor market data indicating unemployment among U.S. recent college graduates and tech workers which is described above in Section II.B. Third, the Department notes the mass layoffs of U.S. workers by many of the same companies that are applying for LCA-program visas, as is documented in Section II.B.

By contrast, when the Department originally set Wage Level I at the 17th percentile in 2005, it offered no findings, no data, and no justification for this figure. But, at the same time, the Department acknowledges that, although all jobs in the H-1B system in particular require the theoretical and practical application of a body of "highly specialized knowledge," its historical position has been that Wage Level I is for wage rates for "beginning level employees."[174] However, these entry-level occupations must nonetheless conform with the other requirements of the LCA programs, including that they be specialty occupations. At this time, the Department believes that the 34th percentile strikes the correct balance by aligning LCA-program workers with proper comparators, while also retaining the entry-level quality of the Wage Level. The Department welcomes evidence regarding the supply of U.S. workers, or the impact of technologies including artificial intelligence, that would indicate the need for Wage Level I to be pushed higher to prevent adverse impacts.

Another reason why the Department is proposing to set Wage Level I at the 34th percentile, and not lower (or higher), is because it also, for reasons stated below, believes that Wage Level IV should be set at the 88th percentile. Using the above mathematical formula that arranges the prevailing wages to match the Benchmark Value, if the Department set Wage Level I lower, it would require Level IV to be set higher. This

[174] https://www.dol.gov/sites/dolgov/files/eta/oflc/pdfs/npwhc_guidance_revised_11_2009.pdf.

would pose a practical problem as in certain occupational and geographic arrangements, OEWS data may not be sufficiently granular to supply the needed information. Conversely, if Wage Level I were set higher, it would force Wage Level IV to be lower. This would be undesirable because it would water down the prevailing wage requirement for Wage Level IV and force the other Wage Levels to be truncated.

iii. The Department's Setting of Wage Level IV to the 88th Percentile

While the Department's proposed change of Wage Level I from the 17th to the 34th percentile requires Wage Level IV to be set to the 88th percentile, it also believes that this change also enhances the prevailing wage methodology's alignment with the INA. The Department believes that Level IV should be increased from the 67th percentile to the 88th percentile, because most LCAs that are assigned a Level IV prevailing wage already offer actual wages significantly above the Level IV prevailing wage, suggesting that the Level IV prevailing wage does not align with the education and experience of the highest skilled workers in specialty occupations. In Fiscal Year 2024, the Department observed that employers filed Labor Condition Applications (LCAs) for over 100,000 H-1B positions classified at Wage Level IV, representing the highest skill tier under the current prevailing wage structure. The average wage paid to these workers was $172,714, while the average prevailing wage certified for these positions was $151,095—a difference of $21,619, or approximately 14 percent.[175] This also indicates that this actual wage is more consistent with that which is paid to similarly employed U.S. workers than is the prevailing wage rate.

The highest wage level should be commensurate with the wages paid to the most highly compensated workers in any given occupation because such workers are also generally the workers with the most advanced skills, education, and competence in the

[175] Employment and Training Administration, Office of Foreign Labor Certification, Performance Data, available at https://www.dol.gov/agencies/eta/foreign-labor/performance.

occupation, whereas the current methodology more likely includes in the Level IV wage tier some workers who may not be described as "specialty" workers possessing the most specialized knowledge and the highest degree of competence. It is generally the case that, as a worker's education and experience increase, so too do his wages. Further, while the INA places baseline, minimum skills-based qualifications on who can obtain an H-1B or EB-2 classification, it does not place any limit on how highly-skilled a worker can be within these programs.[176] Thus, while the Department necessarily discounted the lower end of the OEWS wage distribution in determining the entry-level wage, full consideration must be given to the uppermost portion of the distribution in adjusting the Level IV wage.

Indeed, H-1B workers can be, and at least in some cases already are, among the most highly paid workers, and therefore likely fall among the most highly skilled workers within their respective occupations.[177] This is demonstrated by a review of the highest salaries paid to H-1B workers in the most common occupations in which H-1B workers are employed. In FY 2024, for example, the most highly compensated H-1B nonimmigrants employed as Computer Systems Analysts earned annual wages over $500,000. The wages of workers at the 90th percentile of the OEWS distribution for these occupations, by contrast, are significantly lower. Computer Systems Analysts at the 90th percentile in the OEWS distribution make approximately $166,030.[178] In other words, H-1B workers in some instances make wages far in excess of those earned by 90 percent of all U.S. workers in the same occupation. This indicates that the 67th percentile is simply not commensurate with the wages paid to similarly employed U.S. workers. While OEWS data does not directly report the education and experience levels of the highest-

[176] 8 U.S.C. 1184(i)(1) and 8 U.S.C. 1153(b)(2).
[177] Data on the actual wages paid to H-1B workers shows that in some cases such workers are paid at or near the very top of the OEWS wage distribution.
[178] O*NET, Computer Systems Analyst (last accessed on 12/5/2025 at 12:52 PM), available at https://www.onetonline.org/link/localwages/15-1211.00?st=.

paid U.S. workers, the Department reasonably infers that workers earning at or above the 90th percentile are likely to possess advanced degrees, substantial experience, and significant responsibility—characteristics that closely align with those of the most highly compensated H-1B workers in the same occupational categories.

Further demonstrating that H-1B workers can be and sometimes are among the most skilled and competent workers in their occupations, an examination of the top end of the wage distribution within the H-1B program shows that, for H-1B nonimmigrants with graduate and bachelor's degrees, the association between education and income level begins to break down to some extent. An analysis of the highest earners within the H-1B program reveals that H-1B workers—particularly those with bachelor's and graduate degrees—can be among the most skilled and capable in their fields. Interestingly, at this top end of the wage distribution, the typical link between education level and income begins to weaken. Among the most highly compensated H-1B workers, the higher the income level, the more likely the alien worker only has a bachelor's degree.[179] This strongly suggests that individuals at the fourth wage level possess the most advanced skills and competence—the only remaining parameters that can reasonably account for significant wage differentials—within their occupations, as additional years of education are largely irrelevant in explaining wages among top earners.

Furthermore, because Levels II and III are set according to a statutory formula, prescribed by the INA, the Department has selected the 88th percentile for Level IV to ensure that Levels II and III are set at a sufficiently high level. This approach improves alignment with labor market conditions while preserving the Department’s longstanding reliance on OEWS data and its statutory obligations to ensure that the employment of alien workers does not adversely affect the wages and working conditions of U.S. workers.

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[179] This analysis is based on data provided by 2024 OFLC Disclosure Data.

In cases where the OEWS survey does not provide a computable Level IV wage due to top-coding or data limitations, DOL proposes that the OFLC Administrator would determine the Level IV wage using the greater of: (1) the current hourly wage rate applicable to the highest OEWS wage interval for the specific occupation and geographic area; or (2) the arithmetic mean of the wages of all workers for the most specific occupation and geographic area available. This approach ensures that prevailing wage determinations remain consistent with the statutory requirement to reflect wages commensurate with experience, education, and level of supervision, while avoiding distortions caused by incomplete data.

iv. Wage Levels II and III

The Department will continue to calculate the two intermediate wage levels in accordance with 8 U.S.C. 1182(p)(4), which provides that, in establishing a four-tier wage structure, "[w]here 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."[180] The BLS OES survey is, as provided in the statute, an existing survey that has long provided two wage levels for the Department's use in setting the prevailing wage rates.[181]

The Department applies the statutory formula as follows: The difference between the two levels provided by the OEWS survey data is 54 percentiles. Dividing this by three yields a quotient of 18. This quotient, added to the value of the Level I wage at the 34th percentile, yields a Level II wage at approximately the 52nd percentile. When subtracted

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[180] 8 U.S.C. 1182(p)(4).

[181] BLS also produces data for the public from the OES survey that is divided into five different wage levels. However, the public data BLS produces is not broken down with the level of granularity by area of employment needed to administer the Department's immigrant and nonimmigrant programs, which is why BLS has also long produced a separate dataset with two wage levels for the Department's use.

from the value of the Level IV wage at the 88th percentile, the quotient yields a Level III wage at approximately the 70th percentile of the OEWS distribution.

The Department invites public comment on whether these levels appropriately reflect the statutory requirements and labor market realities, or whether alternative prevailing wage levels would more comprehensively aid the Department in fulfilling its statutory and regulatory requirements. The Department is particularly interested in feedback on whether the proposed methodology appropriately accounts for education, experience, and responsibility levels as required by the INA in 8 U.S.C. § 1182(p)(4).

2. The EB-3 Immigrant Classification

The Department emphasizes that both the H-1B and EB-2 programs are, by statutory design and regulatory implementation, intended for highly skilled workers. The INA defines a "specialty occupation" for H-1B purposes as one that requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree in a specific specialty.[182] Similarly, the EB-2 immigrant visa classification is generally limited to individuals who possess advanced degrees or equivalent or demonstrate exceptional ability in the sciences, arts, or business.[183] These statutory definitions are reinforced by Department regulations, which require that qualifying positions demand education and expertise beyond that of the general labor market. Consistent with these requirements, OFLC data from FY 2024 show that over 89 percent of H-1B positions and 68 percent of PERM applications were for occupations in Job Zones 4 and 5—categories defined by the Department's O*NET system as requiring considerable to extensive preparation, including advanced education, training, and experience. This concentration in high-preparation occupations underscores

[182] 8 U.S.C. 1184(i)(1).
[183] 8 U.S.C. 1153(b)(2).

the programs' focus on high-skill labor and supports the Department's approach to calibrating prevailing wage levels accordingly.

As noted previously, the Department's four-tier wage structure is used to set the prevailing wage in five different immigrant and nonimmigrant programs. Having explained the Department's reasoning for how the adjusted wage levels are appropriate for the programs that consist of more highly skilled workers with advanced degrees and/or specialized knowledge—namely the EB-2 immigrant classification and the H-1B, E-3, and H-1B1 nonimmigrant programs—the Department now turns to explaining the appropriateness of using those same wage levels for the EB-3 classification, which consists of lower-skilled workers, professionals with bachelor's degrees, and individuals capable of performing unskilled labor. The Department concludes that the adjusted wage levels under the four-tiered structure are appropriate for use in occupations and with applications for work falling within the EB-3 classification.

At the outset, the Department notes that the close connections between the EB-3 classification and the other programs covered by the Department's wage structure make it inadvisable and impractical to treat the EB-3 classification differently. As detailed above, many H-1B workers adjust status to that of lawful permanent residents through the EB-3 classification, and the manner in which the programs operate means that, in many cases, alien workers can, in some sense, have one foot in each program simultaneously for extended periods of time. Using different wage methodologies in the programs would therefore result in the undesirable possibility of a worker doing the same job for the same employer suddenly receiving a different wage upon adjusting status. Similarly, while having somewhat different eligibility criteria, the EB-2 and EB-3 classifications are not mutually exclusive—many workers that satisfy the eligibility criteria for one would also

do so for the other.[184] Applying the same wage methodology in both classifications is therefore important to ensure consistent treatment of similarly situated workers and prevent the creation of incentives for employers to prefer one classification over the other, to the detriment of U.S. workers that may be interested in the relevant job opportunity, because different wage methodologies yield different wages.[185] These considerations make it important to treat the EB-3 classification the same as the EB-2 and H-1B programs. The question then becomes whether the EB-3 classification is properly accounted for by the adjusted wage levels. The Department believes it is.

The Department acknowledges that applying the four-tier wage structure in five different immigrant and nonimmigrant programs with varying populations, and across hundreds of different occupational classifications, presents inherent challenges. The breadth of occupations to which the wage levels apply means that the prevailing wages established by the wage structure will not be perfectly tailored to the circumstances of each individual job opportunity or each occupation.[186] The Department has sought to address this challenge by adopting a methodology that is best tailored to the largest share of the immigrant and nonimmigrant populations covered by the programs that use the four-tier wage structure. Doing so is, in the Department's judgment, the best approach to addressing variations across the programs that is most consistent with the INA. The wage protections in the H-1B and PERM programs are designed to guard against the displacement of, or adverse effect on U.S. workers caused by the employment of alien workers.[187] As noted above, the risk that the presence of lower-wage alien workers in a

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[184] See *Musunuru v. Lynch*, 831 F.3d 880, 885 (7th Cir. 2016) (describing a person applying for both EB-2 and EB-3 status).
[185] See *Comite' De Apoyo A Los Trabajadores Agricolas v. Perez*, 774 F.3d 173, 185–6 (3d Cir. 2014) (noting loopholes that can be created if employers are able to use different methodologies to calculate wages for the same types of workers, to the detriment of U.S. workers).
[186] *Cf.* Wage Methodology for the Temporary Non-agricultural Employment H-2B Program, 76 FR 3452, 3461 (Jan. 19, 2011) (explaining that "particular industries, such as forestry, will fare poorly based on a change to a mean-based OEWS wage rate.").
[187] *See, e.g.*, *Cyberworld Enter. Techs., Inc. v. Napolitano*, 602 F.3d 189, 199 (3d Cir. 2010).

labor market would undercut U.S. workers' wages and job opportunities is greatest when there are larger concentrations of such workers.[188] Adjusting the wage levels with particular attention to those occupations and visa classifications with the largest numbers of alien workers therefore puts the focus on addressing the danger the statutory scheme is intended to guard against—adverse effects on U.S. workers—where it is most acute.

Thus, as previously explained, in ascertaining the wages paid to U.S. workers similarly employed to H-1B workers, the Department's analysis focused, to the greatest extent possible, on those occupations that account for 1 percent or more of the total H-1B population, and which also account for a significant share of the PERM population.[189] Similarly, the Department has given due weight in its analysis of where to set the prevailing wage levels to the fact that the EB-3 classification represents an exceedingly small share of the overall alien worker population covered by the wage structure. The H-1B program is America's largest guest worker program.[190] In FY2023, the Department of Homeland Security approved 386,318 H-1B petitions.[191] That same year, 27,760 workers were admitted for lawful permanent residence in the EB-2 classification.[192] A total of only 27,590 EB-3 immigrant workers were admitted that year.[193] Thus, the EB-3 program accounts for, at most, approximately 5 to 10 percent of the total immigrant and nonimmigrant population governed by the four-tier wage structure that is admitted or otherwise provided status in a given year.[194] That does not mean that the Department has

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[188] George J. Borjas, Immigration Economics (2014).
[189] In some instances, particularly when analyzing the NSF data, the Department was constrained in its ability to analyze wages for all top H-1B occupations because of discrepancies between how the NSF and BLS surveys classify workers by occupation.
[190] Nicole Torres, *The H-1B Debate, Explained*, Harvard Business Review (May 4, 2017), available at https://hbr.org/2017/05/the-h-1b-visa-debate-explained.
[191] U.S. Citizenship and Immigration Services, Characteristics of H-1B Specialty Occupation Workers (Mar. 6, 2024), available at https://ohss.dhs.gov/topics/immigration/yearbook/2023.
[192] Department of Homeland Security, 2023 Yearbook of Immigration Statistics, Table 7, Persons Obtaining Lawful Permanent Resident Status by Type and Detailed Class of Admission: Fiscal Year 2023, available at https://ohss.dhs.gov/topics/immigration/yearbook-immigration-statistics/yearbook-2023.
[193] *Id*.
[194] The Department notes that the total number of approved H-1B petitions "exceeds the number of individual H-1B workers sponsored because of the different types of petitions that can be filed (e.g.,

not given full consideration to the EB-3 classification in assessing how best to adjust the wage levels. It only means that the Department has appropriately weighed the size of the program, and therefore the risk it poses to U.S. workers, in identifying a solution to the adverse effects caused by the existing wage levels—an approach the Department regards as the best way to take into account the variations across the programs covered by the wage structure in effectuating the purpose of the INA's wage protections. Moreover, because H-1B workers may later pursue lawful permanent resident status based on an approved immigrant visa petition in the EB-3 preference category, maintaining misaligned wage levels across these categories could create a financial incentive for employers to pursue the classification with the lower wage requirement, thereby undermining the integrity of the wage structure and the Department's efforts to ensure consistent labor market protections across programs.

After assessing the nature of the EB-3 immigrant population, the Department has determined that the adjusted wage levels under the four-tiered structure adequately take into account the experience, education, and level of supervision of EB-3 workers, in light of the purpose of the INA's wage safeguards. The EB-3 program consists of three discrete classifications: "skilled workers," defined as aliens who are "capable . . . of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States;" "professionals," defined as aliens "who hold baccalaureate degrees and who are members of the professions;" and "other workers," defined as aliens who are "capable . . . of

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requests for concurrent employment with another employer, requests for extension of stay, amended petitions)." U.S. Citizenship and Immigration Services, Characteristics of H-1B Specialty Occupation Workers Fiscal Year 2023 Annual Report to Congress October 1, 2022-September 30, 2023, (2024), available at https://www.uscis.gov/sites/default/files/document/reports/OLA_Signed_H-1B_Characteristics_Congressional_Report_FY2023.pdf. The filing of these types of petitions means that some nonimmigrants are counted multiple times in the total number of approved petitions. The total number of petitions for initial employment in FY23 was 118,948. However, that number does not account for the petitions filed on behalf of H-1B nonimmigrants to extend their status, and thus undercounts the total number of actual H-1B workers who were authorized to work in FY23.

performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States."[195] For each of these classifications, the revised wage levels, set at approximately the 34th, 52nd, 70th, and 88th percentiles, provide an appropriate method for calculating the prevailing wage. While some EB-3 workers may not meet the statutory requirements for H-1B classification, an H-1B worker would generally qualify for EB-3 classification. As such, and consistent with the Department's approach to the H-1B1 and E-3 programs, the Department does not believe it is appropriate to bifurcate the wage structure across programs. Maintaining a unified four-tier wage methodology ensures consistency in wage determinations, prevents program shopping, and promotes equitable treatment of similarly employed alien workers across visa classifications.

As for the lower-skill classifications, the Department has previously recognized that lower-skilled workers are less likely to vary in the wages they are paid based on differences in skill levels.[196] This is because skill levels themselves are less likely to vary in such occupations. A job that requires limited skills, such as can be acquired through two years of training or less, can likely be performed with similar proficiency by someone with lower levels of education and experience as by someone with greater experience and education.[197] Meaningful differentiation between workers based on skills in such occupations is therefore reduced. From this, the Department has previously concluded that setting prevailing wages for lower-skilled workers closer to the mean of the overall OEWS wage distribution is a more appropriate way of guarding against adverse wage effects.[198] Since most workers in lower-skilled occupations have similar levels of skill, a wage that approximates the average wage for all workers in the

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[195] 8 U.S.C. 1153(b)(3)(iii); 8 CFR 204.5(l)(2).
[196] *See* Wage Methodology for the Temporary Non-agricultural Employment H-2B Program, 76 FR 3452, 3461 (January 19, 2011).
[197] *Id*. at 3458.
[198] *Id*. at 3459.

occupation is more likely to ensure that similarly employed workers make similar wages. For example, in FY 2024, the Department certified PERM applications for occupations such as food service managers, meat processing workers, and mushroom pickers—roles that typically require limited formal education or training. In these occupations, the range of skills and qualifications among workers is relatively narrow, supporting the Department's conclusion that prevailing wages for such roles should be set closer to the mean of the OEWS wage distribution to reflect the limited variation in worker qualifications.

That reasoning holds true for the lower-skilled classifications in the EB-3 immigrant visa preference category, which include workers whose jobs are unskilled or require two years of experience or training. These workers are far more likely to fall within the lower two wage levels given their relative lack of education and experience.[199] Under the new wage levels, they would thus likely be placed at either the 34th or the 52nd percentiles of the OEWS wage distributions. Both levels, while not perfectly tailored to the lower-skilled component of the EB-3 classification, fall near the middle part of the wage distribution, and are therefore generally appropriate for lower-skilled workers.

For separate reasons, the Department concludes that the newly adjusted wage levels also adequately satisfy the Department's obligations in setting the wage levels under the INA with respect to EB-3 professionals. Unlike lower-skilled EB-3 workers, professionals with bachelor's degrees in the EB-3 classification do possess a level of skill that allows for greater differentiation within the occupation. It is also the case that such workers will likely have lower levels of education and experience than EB-2 workers, who are required to possess a master's degree or equivalent. An entry-level wage at the 34th percentile, while more closely tailored to the education and experience of an EB-2 or

[199] LCA Performance Data, available at https://www.dol.gov/agencies/eta/foreign-labor/performance.

H-1B worker, may be on the higher end for an EB-3 professional in some cases.[200] But other considerations demonstrate the appropriateness of the 34th percentile of the OEWS wage distribution as the entry-level wage for such workers.

The Department emphasizes that the labor certification process in the PERM programs is designed to ensure that there are not available and willing U.S. workers and that the wages and working conditions of U.S. workers will not be adversely affected by the employment of the immigrant worker(s). From the time that the INA was first enacted, its labor certification provisions were designed "to provide strong safeguards for American labor and to provide American labor protection against an influx of aliens entering the United States for the purpose of performing skilled or unskilled labor where the economy of individual localities is not capable of absorbing them at the time they desire to enter this country."[201] The availability of U.S. workers to fill jobs for which alien workers are sought, being a guiding consideration behind the INA's wage protections, the adequacy of the prevailing wage levels for EB-3 professionals is an essential component of the Department's certification.

Within the U.S. workforce, the credentials associated with the EB-3 professional classification are significantly more common than the credentials associated with the EB-2 classification. As of 2019, 36 percent of people age 25 and older in the United States possessed a bachelor's degree or higher.[202] That is compared to only 13.4 percent of native-born Americans and 14.1 percent of the foreign born population who possess an advanced degree, such as a master's degree or doctorate.[203] It follows that employers

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[200] The Department also notes that, in some cases, EB-3 workers may in fact have higher levels of formal education than H-1B workers, given that H-1B workers can demonstrate specialized knowledge through experience and training, whereas possession of a bachelor's degree is required for all EB-3 immigrants. See Employment-Based Immigrants, 56 FR 60897, 60900 (Nov. 29, 1991).

[201] *Econo Inn Corp. v. Rosenberg*, 145 F. Supp. 3d 708, 713 (E.D. Mich. 2015) (quoting H.R. Rep. No. 1365, 82nd Cong. 2nd Session (1952)).

[202] United States Census Bureau, U.S. Census Bureau Releases New Educational Attainment Data, available athttps://www.census.gov/ newsroom/ press-releases/ 2020/ educational-attainment.html.

[203] *Id*.

seeking to recruit individuals with only a bachelor's degree should be more likely to find qualified and available U.S. workers than if they are recruiting for a position that requires a master's degree. The pool of available workers in such cases is significantly larger.

As noted above, the Department is required to determine and certify that "there are not sufficient workers who are able, willing, qualified" and available to fill the position for which an EB-3 worker is sought.[204] This requirement is critical to the INA's "core objective[ ] [of] balanc[ing] certain industries' temporary need for alien workers against a policy interest in protecting U.S. workers' jobs, salaries, and working conditions."[205] In the case of EB-3 professionals, the adjusted wage levels, which may in some cases place a slight premium on the wages paid to professionals with bachelor's degrees, will better allow the Department to issue a certification that no U.S. workers are available for the job opportunity.

Finally, the Department notes that continuing to employ the same wage structure in this manner across both the H-1B and PERM programs advances the Department's interest in administrative consistency and efficiency. As noted already, there is significant overlap between the H-1B and PERM programs. In FY2024, 57.6 percent of all PERM applications were for aliens that at the time the applications were filed were already working in the U.S. on H-1B visa classification.[206] Further, the top ten most common H-1B occupations include six of the ten most common PERM occupations. In FY 2024, 68 percent of PERM cases were for jobs in Job Zones 4 and 5[207]—the most highly skilled job categories, which also account for over 89 percent of all H-1B cases.[208] In sum, the

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[204] 8 U.S.C. 1182(a)(5)(A)(i)(I).
[205] *Comite de Apoyo a los Trabajadores Agricolas v. Solis*, 933 F. Supp. 2d 700, 712 (E.D. Pa. 2013).
[206] Office of Foreign Labor Certification, Permanent Labor Certification Program—Selected Statistics, FY 24.
[207] Under the O*Net system a job zone is a group of occupations that are similar in the amount of education, experience, and on the job training that is required for a worker to fill a position in the occupation. Job Zone 4 includes occupations that require considerable preparation; Job Zone 5 includes occupations that require extensive preparation.
[208] This information is based on data collected by the Department's Office of Foreign Labor Certification on LCAs filed in FY 2024.

close connection between the types of jobs and aliens that are covered by the two programs further supports using the same wage structure for both the PERM and H-1B programs.

For these reasons, the Department has concluded that using the adjusted wage levels for the EB-3 preference category is in keeping with the relevant statutory considerations that govern how the Department sets prevailing wage levels.

D. Explanation of Proposed Amendments To Adjust the Prevailing Wage Levels

1. Proposed Revisions to the Computation of the Wage Levels Based on the OEWS in the Permanent Labor Certification Program (20 CFR 656.40)

The Department is proposing to revise paragraphs (a), (b)(2), and (3) of 20 CFR 656.40. The most substantial changes are those made to paragraphs (b)(2). First, the Department is proposing revisions to § 656.40(b)(2) by adding new paragraphs (b)(2)(i) and (ii) to codify the practice of using four wage levels and to specify the manner in which the wage levels are calculated. Specifically, new paragraph (b)(2)(i) stipulates that "[t]he BLS shall provide the OFLC Administrator with the OEWS wage data by occupational classification and geographic area" and goes on to specify the four new levels (Levels I through IV) to be applied.

The proposed new paragraph (b)(2)(i)(A) describes the Level I Wage. This first wage level—currently calculated as the mean of the bottom third of the OEWS wage distribution—is proposed to be calculated as the 34th percentile of the wage distribution for the most specific occupation and geographic area available. Next, new paragraph (b)(2)(i)(D) provides that the Level IV Wage—currently calculated as the mean of the upper two-thirds of the OEWS wage distribution—is proposed to be calculated as the 88th percentile of the wage distribution for the most specific occupation and geographic area available.

For the two intermediate levels, II and III, the Department proposes to continue relying on the mathematical formula Congress provided in the INA, as previously described in detail above. Thus, proposed new paragraph (b)(2)(i)(B) states that the Level II Wage shall be determined by first dividing the difference between Levels I and IV by three and then adding the quotient to the computed value for Level I. The Level III Wage is defined in proposed new paragraph (b)(2)(i)(C) as a level determined by first dividing the difference between Levels I and IV by three and then subtracting the quotient from the computed value for Level IV. This yields second and third wage levels at approximately the 52nd and 70th percentiles, respectively, as compared to the current computation, which places Level II at approximately the 34th percentile and Level III at approximately the 50th percentile.

The proposed new paragraph (b)(2)(ii) states that the OFLC Administrator would publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the prevailing wage rates produced under the new paragraph (b)(2)(i) of section 656.40 as a notice posted on the OFLC website. This continues the Department's practice of having the OFLC Administrator announce, via a notice of implementation, updates to OEWS wage data. Currently, OFLC publishes a routine announcement each year implementing updated OEWS prevailing wages for the new wage year and discussing any other significant related updates, including changes to OEWS survey areas and relevant updates to the SOC system. These announcements also serve as notice to employers of changes they need to make to the wage information on applications to reflect the changes to the OEWS.

The proposed revisions align with OFLC's current practice for notifying employers directly, rather than through the Federal Register, because publishing multiple prevailing wage rates in the Federal Register would be administratively burdensome. Moreover, posting the wage levels on the OFLC website is more user-friendly: it allows

employers and stakeholders to more easily locate and access the relevant wage information. In practice, users are far more likely to find the applicable wage data quickly and accurately on the OFLC website than by navigating the Federal Register.

Further, the proposed revisions to paragraph (b)(2) would provide greater precision in the language used by changing the term "DOL" to "BLS" when describing which entity administers the OEWS survey and eliminate redundancy by deleting the language "except as provided in (b)(3) of this section." Because the Department is now specifying within the regulation exactly how the prevailing wage levels are calculated, the proposed revision would also remove the existing reference to how the levels are calculated—namely the reference to the "arithmetic mean"—and would instead provide that if the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be based on the wages of workers similarly employed using the wage component of the OEWS survey, in accordance with paragraph (b)(2)(i), unless the employer provides an acceptable survey under paragraphs (b)(3) and (g) of this section or elects to utilize a wage permitted under paragraph (b)(4).

Finally, proposed revisions to paragraph (a) would remove an out-of-date reference, explained further below, to a SWAs' role in the prevailing wage determination process. The changes to paragraph (b)(3) account for the elimination of the reference to the "arithmetic mean" in (b)(2).

2. Proposed Revisions to the Wage Requirement for LCAs in the H-1B, H-1B1, and E-3 Visa Classifications (20 CFR 655.731)

The Department proposes amendments in section 655.731 to more clearly explain that it would use BLS's OEWS survey to determine the prevailing wages under this paragraph and proposes to add a sentence to specify that these determinations would be made in a manner consistent with the amended section 656.40(b)(2). In addition, the proposed revisions in paragraphs (a)(2)(ii) introductory text, (a)(2)(ii)(A) introductory

text, and (a)(2)(ii)(A)(2) also include technical and clarifying revisions regarding other permissible wage sources (*i.e.,* applicable wage determinations under the Davis-Bacon Act or McNamara-O'Hara Service Contract Act, as well as other independent authoritative or legitimate sources of wage data in accordance with paragraph (a)(2)(ii)(B) or (C)). The new language also proposes to remove the reference to "arithmetic mean" in paragraph (a)(2)(ii) and now states ". . . the prevailing wage shall be based on the wage component of the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics Survey (OEWS) in accordance with 20 CFR 656.40(b)(2)(i) . . ."

The Department also proposes to amend section 655.731 by making technical revisions to paragraph (a)(2)(ii)(A) to remove another out-of-date reference to a SWA's role in the prevailing wage determination process. Non-agricultural PWD requests are no longer processed by SWAs; since 2010 they have solely been processed by the Department through an OFLC National Processing Center (NPC). The proposed amendments reflect this historical practice.

And finally, the proposed revisions provide technical corrections to paragraph (a)(2)(ii)(A)(2). Specifically, the Department is proposing to replace the incorrect reference to "H-2B nonimmigrant(s)" with "H-1B nonimmigrant(s)." Additionally, in situations where the employer relies on other legitimate sources of wage information due to inability to wait for the NPC to produce the requested prevailing wage for the occupation in question, or for the CO and/or the BALCA to issue a decision, the Department is proposing to add the word "not" in the last sentence to correctly describe the situation where a wage violation would not be found where retroactive compensation by the employer to the H-1B nonimmigrant(s) is timely provided. Thus, the Department proposes that the sentence now state ". . . the employer was not paying the NPC-determined wage, no wage violation will be found if the employer retroactively

compensates the H-1B nonimmigrant(s) for the difference between the wage paid and the prevailing wage, within 30 days of the employer's receipt of the PWD."

These proposed revisions further provide that an NPC would continue to determine whether a job is covered by a collective bargaining agreement that was negotiated at arm's length, but in the event the position for which the employer is filing the LCA is not covered by such agreement, an NPC would determine the wages of workers similarly employed using the wage component of the BLS OEWS, unless the employer provides an acceptable survey. The proposed revisions direct that an NPC would determine the wage in accordance with secs. 212(n), 212(p), and 212(t) of the INA and in a manner consistent with the newly revised section 656.40(b)(2).

3. Implementation of the Proposed Rule

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. Conversely, the Department does not propose to apply the new regulations to any previously-approved prevailing wage determinations, permanent labor certification applications, or LCAs, either through reopening or through issuing supplemental prevailing wage determinations or through notices of suspension, invalidation, or revocation.

E. Reliance Interests

The Department acknowledges that the existing wage levels—set at approximately the 17th, 34th, 50th, and 67th percentiles—have been in place for over 20

years, and that many employers likely have longstanding practices of operating their businesses based on the current wage rates. Adjusting the levels to the 34th, 52nd, 70th, and 88th percentiles represents a significant change, and may result in some employers modifying their use of the H-1B and PERM programs. It would also likely result in higher personnel costs for some employers, as detailed below. However, to the extent employers have serious and legitimate reliance interests in the existing levels, the Department has determined that setting the wage levels in a manner that is consistent with the text of the INA and that advances the statute's purpose of protecting U.S. workers outweighs such interests and justifies such increased costs. Additionally, by applying the new prevailing wage methodology prospectively, it would afford employers the necessary latitude they need to adjust their business needs accordingly.

In effecting an adjustment to the wage levels previously used to set the prevailing wage in the H-1B and PERM programs, the Department is obligated to consider whether "its prior policy has engendered serious reliance interests."[209]

As explained above, the Department continues to believe that the old wage levels are the source, in many cases, of serious, adverse effects on U.S. workers' wages and job opportunities. Adjusting the levels to bring them in line with the wages paid to U.S. workers with levels of education, experience, and responsibility comparable to H-1B workers—and thereby reducing the danger posed to U.S. workers by the employment of alien workers—remains the principal aim of this rulemaking. Ensuring that the Department's wage structure is set in accordance with the relevant statutory factors is also necessarily a controlling objective in the Department's assessment of how best to reform the prevailing wage levels. The old levels have never been justified by economic analysis, and, as detailed above, are in tension with the statutory scheme insofar as they

[209] *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

are based, in many instances, on data about the earnings of workers who cannot be regarded as similarly employed to workers in specialty occupations.[210]

In considering how best to implement these changes, the Department also evaluated whether to eliminate the option for employers to use private wage surveys. This option has historically provided flexibility where government data sources do not fully capture niche labor markets or unique job requirements. Eliminating it entirely could disrupt longstanding compliance practices and impose disproportionate burdens on employers in specialized industries or geographic areas—particularly start-ups and small businesses that often rely on highly specialized roles or emerging occupations not well represented in OEWS datasets. For these employers, private surveys may offer the most accurate reflection of market wages. At the same time, the Department considered that private surveys can be expensive for smaller businesses to commission and administratively complex to validate, creating compliance challenges. Additionally, historical data indicate that private surveys typically produce wages approximately [20 percent higher than OEWS-based prevailing wages,[211]] which could significantly increase costs for employers relying on this option.

Ultimately, while the Department continues to believe that OEWS should serve as the primary source for prevailing wage determinations, it has chosen to retain the use of private surveys in limited circumstances. This approach preserves employer flexibility, mitigates potential adverse impacts on businesses operating in specialized labor markets, and balances reliance interests with the statutory mandate to protect U.S. workers. To ensure integrity, the Department would monitor the use of private surveys to prevent

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[210] See, 86 FR 3642.

[211] The 20% figure represents the average percentage difference between Survey-based and OES (Occupational Employment Statistics) prevailing wages across five key SOC codes (15-1121, 15-1132, 15-1199, 15-1252, 15-1299) in FY 2024 H-1B LCA data. For each SOC code, the department calculated the mean prevailing wage for both Survey and OES sources, then computed the percentage difference relative to the OES baseline. The overall 20% is the mean of these five individual percentage differences, which ranged from 10.1% (15-1199) to 29.2% (15-1252).

abuse and ensure compliance, and it already reserves the right to reject any private survey that does not meet methodological standards or otherwise fails to satisfy regulatory requirements.[212]

The Department invites public comment as to interested parties' legitimate and serious reliance interests in the previous wage methodology.

F. The Department Requests Comments on All Aspects of Its Revised Methodology for Establishing Prevailing Wage Levels and Regulatory Alternatives

The Department invites comments on all aspects of the proposed methodology changes. The Department is open to adopting any of the regulatory alternatives discussed under Section III.A.6 in this NPRM and therefore is particularly interested in comments on those alternatives, especially the Experience Benchmarking alternative. The Department is also interested in comments on the continued use of the OEWS to support the computation of prevailing wage levels, identifying other surveys conducted by the United States government or other data sources and methods that can provide comparable information on the wages of U.S. workers by occupation and geographic area, and determining the prevailing wages at Levels I and IV to approximate the level of education, experience, and supervision in the occupational classification. Comments supported by reliable and objective data or other quantifiable studies will be more helpful to the Department in drafting a final rule than comments consisting of qualitative anecdotal evidence.

III. Administrative Information

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14192: Unleashing Prosperity Through Deregulation

[212] See 20 CFR 656.40(b)(3) and 655.731(a)(2)(ii)(B)–(C), which authorize the Department to review and reject private surveys that do not meet established criteria.

1. Introduction

Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis (RIA) must be prepared for a regulatory action that is significant under section 3(f)(1). OIRA has reviewed this rule and designated it a significant regulatory action under 3(f)(1) of E.O. 12866.

E.O. 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Improving Regulation and Regulatory Review, 76 FR 3821, 3821 (Jan. 21, 2011), E.O. 13563 recognizes that some costs and benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive

impacts. *Id.* This proposed rule, if finalized as proposed, is expected to qualify for an exemption from E.O. 14192's otherwise-applicable requirements, due to its immigration-related function.

a. Outline of the Analysis

Section III.A.3 describes the need for the NPRM, and section III.A.4 describes the process used to estimate the costs of the rule and the general inputs used to reach these estimates, such as wages and number of affected entities. Section III.C.3 explains how the provisions of the NPRM would result in costs and transfer payments, and presents the calculations the Department used to reach the cost and transfer payment estimates. In addition, this section describes the non-quantified transfer payments and benefits of the changes contained in this NPRM. Section III.B.5 summarizes the estimated first-year and 10-year total and annualized costs, and transfer payments of the NPRM. Finally, section III.B.6 describes the regulatory alternatives that were considered during the development of the NPRM.

2. Summary of the Analysis

The Department expects that the proposed rule, if finalized, would result in costs and transfer payments. As shown in Exhibit 1, the proposed rule would have an annualized cost of $3.53 million and a total 10-year cost of $24.59 million at a discount rate of 7 percent in 2024 dollars.[213] The NPRM would result in annualized transfer payments (U.S. employers to other entities and individuals, including alien workers) of up to $6.56 billion and total 10-year transfer payments of up to $46.09 billion at a discount rate of 7 percent in 2024 dollars.[214]

[213] The proposed rule will have an annualized net cost of 3.33 million and a total 10-year cost of 28.38 million at a discount rate of 3 percent in 2024 dollars.
[214] The proposed rule will result in annualized transfer payments of up to $6.85 billion and total 10-year transfer payments of up to $58.46 billion at a discount rate of 3 percent in 2024 dollars.

Exhibit 1—Estimated Monetized Costs and Transfer Payments of the NPRM

[2024 $ million]

	Costs	Transfer payments (upper bound)
10-Year Total with a Discount Rate of 3%	28.38	58.46
10-Year Total with a Discount Rate of 7%	24.59	46.09
Annualized at a Discount Rate of 3%	3.33	6.85
Annualized at a Discount Rate of 7%	3.53	6.56

The total cost associated with the NPRM includes only rule familiarization. The rule is not expected to result in any cost savings. Transfer payments are the result of changes to the computation of prevailing wage rates for employment opportunities that U.S. employers seek to fill with alien workers on a temporary basis through H-1B, H-1B1, and E-3 nonimmigrant programs.[215] See the costs and transfer payments subsections of section III.B (Subject-by-Subject Analysis) below for a detailed explanation.

In addition to the rule familiarization cost, based on internal simulation using FY2023 - FY2025 LCA data, the Department estimates that the proposed wage level adjustments would increase the average certified wage by approximately $14,000 per year. This increase, when applied across the volume of certified LCAs, suggests a material economic effect that supports classification of this rule as economically significant under Executive Order 12866.

The Department was unable to quantify some transfer payments and benefits of the NPRM. The Department describes them qualitatively in section III.B (Subject-by-Subject Analysis). The Department invites comments regarding the assumptions, data

[215] As explained, infra, the Department did not quantify transfer payments associated with new certifications under the Permanent Labor Certification Program (e.g., EB-2 and EB-3 classifications) because they are expected to be de minimis due to the comparatively low number of program participants.

sources, and methodologies used to estimate the costs and transfer payments of the NPRM. The Department invites public comments on any additional benefits or costs that could result from the NPRM.

3. Need for Regulation

The Department determined that issuance of this NPRM was necessary to address systemic deficiencies in the prevailing wage determination methodology used in the H-1B, H-1B1, E-3, and PERM programs. These deficiencies have contributed to wage suppression and displacement of U.S. workers in sectors heavily reliant on alien workers. The NPRM was prompted by a confluence of factors:

- **Statutory Misalignment:** The Department concluded that the existing wage levels were not adequately aligned with the statutory requirement under 8 U.S.C. 1182(p)(4) to provide four wage levels commensurate with experience, education, and level of supervision. The prior methodology, which relied on outdated percentile thresholds (approximately the 17th, 34th, 50th, and 67th percentiles), failed to reflect actual labor market conditions and allowed employers to pay alien workers significantly less than their U.S. counterparts.
- **Labor Market Disruption:** Evidence showed that major users of the H-1B program were simultaneously conducting large-scale layoffs of U.S. workers while continuing to hire alien workers at lower wage levels. This raised serious concerns about the program being used to undercut domestic labor.
- **Wage Disparities and Program Abuse:** Departmental analysis of FY2020 - FY2024 LCA data revealed that the average wage offered to H-1B workers per year was approximately $10,191 lower than the average wage for similarly classified U.S. workers. Investigative reports and whistleblower complaints further documented widespread underpayment and misuse of the program,

including cases where U.S. workers were laid off and required to train their lower-paid H-1B replacements.

- **Presidential Proclamation:** On September 19, 2025, the President issued a Proclamation directing the Secretary of Labor to initiate rulemaking to revise prevailing wage levels under the H-1B program. The Proclamation cited longstanding concerns that the current wage structure incentivized the hiring of alien workers at below-market wages, undermining the program's intent and adversely affecting U.S. workers.

Given these factors, the Department concluded that immediate regulatory action was necessary to prevent further harm to U.S. workers and to restore integrity to the prevailing wage system.

4. Analysis

The Department estimated the costs and transfer payments of the NPRM relative to the analytic baseline defined as the state of the world reflecting current and recently finalized practices for complying, at a minimum, with the regulations governing permanent labor certifications at 20 CFR part 656 and labor condition applications at 20 CFR part 655, subpart H. The baseline should also incorporate the effects of the recently published USCIS H-1B rule, including its weighted lottery system and any associated changes to visa allocation, wage levels, and employer behavior. Accordingly, the regulatory analysis presented here discusses potential refinements toward the goal of reflecting the incremental impacts of the Department's proposed rule, above and beyond those attributable to the USCIS rule.

In accordance with the regulatory analysis guidance articulated in OMB's Circular A-4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences if this rulemaking is finalized as proposed (i.e., costs and transfer payments experienced by entities affected). The analysis

covers 10 years (from 2026 through 2035) to ensure it captures major costs and transfer payments that accrue over time. The Department expresses all quantifiable impacts in 2024 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A-4.

Unless otherwise noted, the same methods, inputs and assumptions are used to analyze all transfers, benefits and costs associated with the relevant work programs, regardless of visa status. The Department requests comment on whether and how effects would differ as a function of visa-based participation (including due to regulatory interaction with statutory visa caps) versus program participation for which visa issuance is unnecessary.

Exhibit 2 presents the number of entities affected by the NPRM. The number of affected entities is calculated using OFLC performance data from fiscal years (FYs) 2020 - 2025. The Department uses them throughout this analysis to estimate the costs and transfer payments of the NPRM.

Exhibit 2—Number of Affected Entities by Type [FY 2020-2025 annual average]

Entity type	Number
Unique H-1B Program Certified Employers[216]	63,686
PERM + H-1B Program Certified Worker Positions with Prevailing Wage Set by OEWS[217]	1,091,205
Unique PERM Employers[218]	26,169

a. Estimated Number of Workers and Change in Hours

[216] The total unique LCA employers in 2020, 2021, 2022, 2023 2024 and 2025 were 60,890, 58,358, 63,558, 61,506, 65,830 and 71,971 respectively.
[217] The total number of worker positions associated with LCA certifications that use OEWS prevailing wages in 2020, 2021, 2022, 2023 2024 and 2025 were 829,752, 1,592,194, 1,010,848, 1,071,320, 1,156,595 and 886,520 respectively.
[218] The unique employers in 2020, 2021, 2022, 2023, 2024 and 2025 were 23,934, 26,233, 23,502, 23.779, 22,195 and 37,372 respectively.

The Department presents the estimated average number of applicants and the change in burden hours required for rule familiarization in section III.B (Subject-by-Subject Analysis).

b. Compensation Rates

In section III.B (Subject-by-Subject Analysis), the Department used the hourly compensation rate presented in Exhibit 3 to estimate rule familiarization costs. The Department used the BLS mean hourly wage rate for private sector human resources specialists.[219] We adjust the wage rates to reflect total compensation, which includes non-wage factors such as overhead and fringe benefits (e.g., health and retirement benefits). We use an overhead rate of 17 percent[220] and a fringe benefits rate based on the ratio of average total compensation to average wages and salaries in 2024. For the private sector employees, we use a fringe benefits rate of 42 percent.[221]

The fringe wage rate is based on Employer Costs for Employee Compensation data which includes paid leave; supplemental pay (i.e., overtime and premium, shift differentials, and nonproduction bonuses); insurance (i.e., life, health, short-term disability, and long-term disability); retirement and savings; and legally required benefits (i.e., Social Security, Medicare, federal unemployment insurance, state unemployment insurance, and workers' compensation). As wages increase the costs associated with paid leave, retirement savings, and supplemental pay will also increase.

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[219] BLS, Occupational Employment and Wage Statistics, SOC Code 13-1071, May 2024, Occupational Employment and Wage Statistics (last visited August 21, 2025).

[220] Cody Rice, U.S. Environmental Protection Agency, "Wage Rates for Economic Analyses of the Toxics Release Inventory Program," June 10, 2002, https://www.regulations.gov/document? D= EPA-HQ-OPPT-2014-0650-0005.

[221] BLS. (2024). "2024 Employer Costs for Employee Compensation." Retrieved from: https://www.bls.gov/bls/news-release/ecec.htm. Ratio of total compensation to wages and salaries for all private industry workers.

BLS's OEWS data show that the mean hourly wage of Human Resources Specialists is $38.33.[222] The Department applied a 42-percent benefits rate[223] and a 17-percent overhead rate,[224] resulting in a fully loaded hourly wage of $60.94 [= $38.33 + ($38.33 × 42%) + ($38.33 × 17%)].

Exhibit 3—Compensation Rates [2025 Dollars][225]

Position	Base hourly wage rate	Loaded wage factor	Overhead costs	Hourly compensation rate
	(a)	(b)	(c)	d = a + b + c
HR Specialist	$38.33	$16.10 ($38.33 × 0.42)	$6.52 ($38.33 × 0.17)	$60.94

B. Subject-by-Subject Analysis

The Department's analysis below covers the estimated costs and transfer payments of the NPRM. In accordance with Circular A-4, the Department considers transfer payments as payments from one group to another that do not affect total resources available to society (or, if resources are affected, it is through incentive effects uncaptured without more extensive analysis). The regulatory impact analysis focuses on the costs and transfer payments that can be attributed exclusively to the new requirements in the NPRM.

1. Costs

The following section describes the costs of the NPRM.

2. Rule Familiarization

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[222] BLS, Occupational Employment and Wage Statistics, SOC Code 13-1071, May 2024, Occupational Employment and Wage Statistics (last visited August 21, 2025).

[223] BLS, "National Compensation Survey, Employer Costs for Employee Compensation," https://www.bls.gov/ecec/factsheets/compensation-percentile-estimates.htm (last visited November 10, 2025). For private sector workers, wages averaged $31.10 per hour worked in 2024, while benefit costs averaged $13.10, which is a benefits rate of 42 percent.

[224] Cody Rice, U.S. Environmental Protection Agency, "Wage Rates for Economic Analyses of the Toxics Release Inventory Program," June 10, 2002, https://www.regulations.gov/document/EPA-HQ-OPPT-2014-0650-0005 (last visited May 8, 2025).

[225] Numbers may slightly differ due to rounding.

When the changes proposed in a final rule take effect, existing employers of alien workers with H-1B, H-1B1, E-3 visas, and those employers sponsoring alien workers for permanent employment, will need to familiarize themselves with the new regulations. Consequently, this will impose a one-time cost for existing employers in the temporary and permanent visa programs in the first year. Each year, there are new employers that participate in the temporary and permanent visa programs. Therefore, in each year subsequent to the first year, new employers will need to familiarize themselves with the new regulations.

To estimate the first-year cost of rule familiarization, the Department calculated the average number of unique employers requesting H-1B certifications and PERM certifications. The average number of unique H-1B and PERM employers 89,855 was multiplied by the estimated amount of time required to review the rule (1 hour).[226] This number was then multiplied by the hourly, fully loaded compensation rate of Human Resources Specialists ($60.94 per hour). This calculation results in an initial cost of $5.17 million in the first year after the final rule takes effect. Each year after the first year the same calculation is done for the average number of new unique employers requesting H-1B or PERM certifications in FY 2021-2025 and FY 2024 (42,896).[227] This calculation results in a continuing annual undiscounted cost of $2.98 million in years 2 to $3.32 in years 6-10 of the analysis. The one-time and continuing cost yields a total average annual undiscounted cost of $3.2million. The annualized cost over the 10-year period is $3.33 million and $3.53 million at discount rates of 3 and 7 percent, respectively.

3. Transfer Payments

a. Quantifiable Transfer Payments

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[226] This proposed rule amends parts of an existing regulation. Therefore, the Department estimates 1-hour to review the rule assuming a high number of readers familiar with the existing regulation.

[227] The total number of new employers in FY23 was 49,096 (33,059H1B + 16,037PERM), and in FY24 was 38,646 (29,027H1B + 9,619PERM).

This section discusses the quantifiable transfer payments related to changes to the computation of the prevailing wage levels.

As discussed in the preamble, the Department determined that current prevailing wage rates for H-1B workers are often far below what their U.S. counterparts are paid, which suppresses the wages of similarly employed U.S. workers. While allowing employers to access high-skilled workers to fill specialized positions can benefit U.S. workers in some instances, these benefits diminish or disappear when the prevailing wage levels do not accurately reflect the wages paid to similarly situated workers in the U.S. labor market. When prevailing wage levels are artificially low, firms can replace qualified U.S. workers with lower-cost alien workers.

Therefore, the Department is amending § 656.40(b) to codify four prevailing wage levels and their calculations. New paragraph (b)(2)(i) provides that the OFLC Administrator will determine prevailing wages at four levels (Levels I through IV). Level I—currently calculated as the mean of the bottom third of the OEWS wage distribution—would be adjusted from the 17th percentile to the 34th percentile. Level IV—currently calculated as the mean of the upper two thirds of the OEWS wage distribution—would increase approximately from the 67th percentile to the 88th percentile.

Consistent with the formula provided in the INA, Level II would be calculated by dividing by three, the difference between Levels I and IV, and adding the quotient to the computed value for Level I. Level III would be calculated by dividing by three the difference between Levels I and IV, and subtracting the quotient from the computed value for Level IV. This yields a Level II prevailing wage at approximately the 52nd percentile and a Level III prevailing wage at approximately the 70th percentile, as compared to the current computation, which places Level II at approximately the 34th percentile and Level III at approximately the 50th percentile.

Finally, the Department is revising § 655.731 to explain that it will use the BLS's OEWS survey wage data to establish the prevailing wages in the H-1B, H-1B1, and E-3 visa classifications, and adding a sentence to explain that these determinations will be made by the OFLC NPC in a manner consistent with § 656.40(b)(2).

The Department calculated the impact on wages that would occur from implementation of the prevailing wage computation changes contained in the NPRM. It is expected that the increase in prevailing wages under the NPRM would induce some employers to employ U.S. workers instead of alien workers from the H-1B program, but nonetheless the Department still expects that the same number of H-1B visas would be granted under the annual caps. For example, in FY2024 USCIS received approximately 781,000 registrations for 85,000 available slots—more than nine times the supply—and the cap was reached within the first five business days each year from FY2019 through FY2025. Higher prevailing wage levels do not necessarily mean that demand for temporary alien workers would fall below the available supply of visas.[228] Under existing prevailing wage levels, which the Department has shown are too low and do not accurately reflect the wages paid to similarly situated U.S. workers, demand for temporary alien workers far exceeds the statutory limits on supply. Usually, prices rise in a market when demand exceeds supply. However, given the statutory design of the H-1B system, along with the lower wages for comparable work in many other countries and the non-pecuniary benefits of participating in the H-1B program, prices for temporary alien workers under the H-1B program have stayed too low to depress overall employer demand.

[228] Data on H-1B electronic registrations and selection numbers for FY 2024 are published by U.S. Citizenship and Immigration Services (USCIS). See FY 2024 H-1B Initial Registration Period Updates, available at https://www.uscis.gov/sites/default/files/document/outreach-engagements/FY2024H1BInitialRegistrationPeriodUpdates.pdf.

For the purposes of this regulatory analysis, it is helpful to distinguish between labor sub-markets characterized by differing levels of worker productivity. Suppose an alien worker is highly productive and therefore could be profitably hired at a wage at least as high as a proposed wage threshold (for example, the Level IV proposal). In the presence of the numerical cap on the H-1B program, that profit may be forgone due to the worker not being able to acquire a visa; instead, in some such cases, the visa would instead be allocated to the hiring of a less-productive alien worker at a wage that is lower (but still above an *existing* wage threshold relevant to the H-1B program). The proposed rule, interacting with the H-1B visa cap, would generate transfers from U.S employers that, in the baseline, would employ relatively low-productivity guest workers; these transfers would flow to some combination of: (a) relatively low-productivity workers, who may be foreign or from the United States,[229] and (b) U.S. employers newly able to hire high-productivity alien workers.[230] The quantification presented below does not reflect the probable response by employers of hiring higher-productivity guest workers; as such, it yields an upper bound, and possibly an extreme upper bound, on the aggregate losses experienced by U.S. employers. Similarly, a shift in H-1B visa allocation from relatively low-productivity to high-productivity workers is an anticipated effect of a recently published final rule issued by DHS (RIN 1615-AD01; 90 *FR* 60864); that final rule and this proposal's overlapping effects are combined in the quantification presented below, thus generating an additional tendency toward overestimation of the effects specifically attributable to this proposed rule. The Department notes that the number of H-1B visas that could be affected by DHS's final rule represents a fraction of the total

[229] The NPRM is still inducing a wage transfer under these cases where U.S. workers are employed instead of H-1B workers and therefore no adjustments to the wage estimates are necessary due to this effect. However, it is possible that prevailing wage increases will induce some employers to train and provide more working hours for incumbent workers, resulting in no increase in employment but an increase in earnings (with other accompanying effects, such as the cost of the newly-provided training).

[230] Related transfers (in the former of worker surplus—the difference between wage received and reservation wage) would flow from lower- to higher-productivity foreign workers and possibly from higher- to lower-productivity U.S. workers.

number of certified H-1B visas each year.[231] The Department welcomes public comment on how DHS's final rule could affect the cost-benefit analysis of this proposal.

Given that participation in temporary labor certification programs is voluntary and there exists an alternative labor market of U.S. workers who are not being prevented from accepting work offered at potentially lower market-based wages, there is some uncertainty around the extent to which an increase in prevailing wages would lead to an efficiency loss. Due to data limitations on the expected change in labor demand and supply of U.S. workers, the Department cannot measure accurately the efficiency losses to the U.S. labor market created by the new prevailing wage system. While the Department discusses this potential impact qualitatively, it welcomes comments on how to estimate changes to efficiency from the new prevailing wage levels.

For each H-1B certification in FY 2023, FY 2024, and FY 2025, the Department used the difference between the estimated prevailing wage level under the NPRM and the wage offered under the current baseline to establish an estimated bound on the wage impact of the prevailing wage computation changes in each calendar year of the certification's employment period. Under the H-1B classification, employment periods for certifications can last up to three years and generally begin up to six months after a certification is issued by the Department. Therefore, a given fiscal year can have wage impacts that start in that calendar year and last up to three years, or could start in the following calendar year and have an end-date up to four calendar years past the fiscal year. For example, if an application certified in FY 2023 is used for employment beginning in March 2024 and lasting three years, the wage impacts would extend through March 2027. The NPRM does not retroactively impact certified wages, so there would be new H-1B applications certified by the Department during FY 2025 that may extend well

[231] Preliminary calculations suggest that a shift toward Levels III and IV and away from Level I, to the extent indicated in the analysis of the DHS rule, might decrease overall estimates of this proposed rule's effect by approximately 3 percent.

into the analysis period. Therefore, the rule would only impact new certifications in its first year, new and continuing certifications from one year prior in its second year, and both new and continuing certifications from two years prior in its third year.

To account for this pattern of wage impacts, we classify certifications into three cohorts based on the length of their employment period and calculate annual wage impacts for each cohort using FY 2023–FY 2025 certification data. These cohorts are: (1) certifications lasting less than one year, (2) certifications lasting one to two years, and (3) certifications lasting two to three years. While this three-cohort structure helps organize the analysis, it does not imply that all impacts stabilize after three years. Because new certifications continue to enter each year and some multi-year certifications extend beyond the initial three-year horizon, a steady-state impact is not reached until approximately Year 8 of implementation. This clarification ensures that readers understand the cohorts are a modeling tool, not a representation of when the rule's effects fully level off.

H-1B, H-1B1, or E-3 applications certified by the Department do not necessarily result in employment and employer wage obligations. After obtaining a certification, employers must then submit a Form I-129, Petition for a Nonimmigrant Worker, for approval by USCIS. DHS may approve or deny the H-1B visa petition. DHS approval data represents approvals of petitions based on both certifications issued by the Department that used OEWS data for the prevailing wage or that were based on other approved sources to determine the prevailing wage (e.g., Collective Bargaining Agreements, employer-provided surveys). In FY 2024, approximately 93.5% percent of workers associated with H-1B, H-1B1, and E-3 certifications had prevailing wages based on the OEWS survey. To estimate OEWS-based approvals, we multiplied total DHS

approvals by 93.5 percent and then computed the approval rates.[232] 2023 and FY 2024 data on H-1B, H-1B1, and E-3 certifications with their prevailing wage based on the OEWS survey, adjusted DHS approvals, and approval rate.

Exhibit 4—LCA and I-129 H-1B, H-1B1, and E-3 Approvals and Denials

	FY 2023			FY 2024			Average percent approved
	LCA certified	DHS approved +	Percent approved	LCA certified	DHS approved +	Percent approved	
Total	1,091,874	362,039	33	1,285,721	374,281	29	31
New	432,083	109,786	25	407,987	130,907	32	28
Continuing *	659,791	252,252	38	877,734	243,374	28	33
* Includes: "Continued Employment," "Change Previous Employment," "Change Employer," "Amended Petition," "New Concurrent Employment"							
+ Approval numbers multiplied by 93.5% to account for approvals with prevailing wages set by sources other than OEWS.							

To estimate the wage impacts of new percentiles contained in this NPRM, the Department used publicly available BLS OEWS data that reports the 10th, 25th, 50th, 75th, and 90th percentile wages by SOC code and State.[233] In order to estimate wages for the new NPRM levels of 34th, 52nd, 70th, and 88th percentiles, the Department linearly interpolated between relevant percentiles for reported wages at each SOC code and geographic area combination.[234]

LCA and OEWS data from fiscal years 2020-2024 suggest that 22.5% of LCA certified positions offered wages above the new proposed policy. This suggests that when calculating transfers not every employer would be affected. Furthermore, many employers offered wages relatively close to the new proposed prevailing wage levels,

[232] Form I-129 data for H-1B is obtained from the USCIS H-1B data hub. Retrieved from: https://www.uscis.gov/tools/reports-and-studies/h-1b-employer-data-hub.
[233] BLS OEWS data for Metropolitan and Nonmetropolitan Areas acquired for each year required for the analysis: [May 2020-May 2024]. Retrieved from https://www.bls.gov/oes/.
[234] For example, if OEWS reports a wage of $30 per hour at the 25th percentile and $40 per hour at the 50th percentile then the 34th percentile is interpolated as $30 + ($40−$30) * ((34-25)/(50-25)) = $33.60 per hour.

suggesting that not every employer would be affected in the same way. The department estimates that for fiscal years 2020-2024, the average wage offered by LCA position is around $121,908. This is significantly higher than the mean of the prevailing wage for the same data set which was only $111,717 or $10,191 less than the offered wage.

Exhibit 5—Comparison of New Prevailing Wage and Old Prevailing Wage under Proposed Rule Changes by Wage Level

Wage Level	Old PW	Offered Wage	New PW	Pct Increase Over Old PW	Pct Increase over Offered Wage
I	73,279	82,607	97,746	33.39%	18.33%
II	98,987	109,583	123,212	24.47%	12.44%
III	121,979	134,853	147,333	20.79%	9.25%
IV	144,202	162,807	175,464	21.68%	7.77%

Exhibit 5 presents a comparison of historical and proposed prevailing wage levels alongside offered wages from LCA data spanning 2020 to 2024. The column labeled “Pct Increase PW” reflects the percentage increase from the old to the new prevailing wage levels. For example, at Wage Level I, this represents the shift from the 17th percentile to the 34th percentile of the OEWS wage distribution—an increase of approximately 33.39%. In contrast, “Pct Increase Offered Wage” measures the percentage increase between the average offered wage and the new prevailing wage level. This metric represents the minimum theoretical wage adjustment required under the proposed rule. While “Pct Increase PW” reflects the maximum potential impact—assuming all workers, including those already earning above the new prevailing wage, receive increases—“Pct Increase Offered Wage” provides a more refined estimate. Because these figures are derived from a merged OEWS-LCA dataset rather than the full LCA dataset used in Exhibit 4, the calculated percentages serve as proxies to estimate wage differentials across the broader dataset.

Exhibit 6—Comparison of Proposed Prevailing Wage Levels and Wage Offered by Wage Level

Fiscal Year	Mean Offered Wage	New Prevailing Wage	Difference
2023	122,241	135,549	13,308
2024	127,312	141,031	13,720
2025	133,850	148,439	14,589

To estimate the policy's impact, the Department assumes that wages of workers whose wages are already above the new prevailing wage remain unchanged, while those below the new prevailing wage are raised to exactly the new prevailing wage. It is unlikely that the full wage increase would apply to the majority of workers currently earning below the new prevailing wage (approximately 80%). These inputs and assumptions yield an estimated annual wage transfer of approximately $14,000 per worker.

To model annual impacts, the Department grouped into cohorts based on the year their certification was issued, recognizing that the revised prevailing wage applies only to newly issued visas. While the initial discussion referenced three cohorts for simplicity, the actual transition involves overlapping cohorts across multiple years. In Year 1, only new certifications issued under the revised wage standard are affected. In Year 2, impacts include both new certifications and continuing approvals from Year 1. This pattern continues as additional cohorts enter each year, with cumulative effects increasing until all legacy visas under the previous wage standard have expired. Because H-1B employment periods can last up to three years, steady state is not reached until approximately Year 6, when all active visas reflect the revised prevailing wage. Exhibit 7 and accompanying notes set forth that the model accounts for these overlapping cohorts and the gradual progression to steady state.

Exhibit 7—Estimated Annual Wage Transfer Impact by Year

Year	Affected Approvals*	Prior Cohort 1	Prior Cohort 2+	Total Cohort Affected	Average Wage Difference for Cohort Members *Not* in Prior Cohort	Total Wage Transfer Calculation	Notes
1 (using FY23 data)	109,786	—	—	109,786	$13,308	=109,786×**$13,308**	Only new approvals affected; first cohort
2 (using FY24 data)	130,907	109,786	—	240,693	$13,720	=130,907×**$ 13,720** + Year 1 total	First and second cohorts
3	106,325	130,907	109,786	347,018	$14,589 (using FY25 data)	=106,325×**$ 14,589** + Years 1-2 total	Cumulative across three cohorts
4	106,325	106,325	240,693 =109,786 + 130,907	453,343	$14,589	=106,325× **$14,589** + Years 1-3 total	
5	106,325	106,325	347,018	559,668	$14,589	=106,325× **$14,589** + Years 1-4 total	
6	106,325	106,325	453,343	665,993	$14,589	=106,325×**$ 14,589** + Years 1-5 total	
7	106,325	106,325	449,882	662,532	$14,589	=106,325×**$ 14,589** + Years 2-6 total	
8+	106,325	106,325	425,300	637,950	$14,589	=106,325×**$14,589** + Years 3-7 total	Steady state: no legacy approvals
* Approval numbers multiplied by 93.5% to account for approvals with prevailing wages set by sources other than OEWS.							

From FY 2025, the Department's calculations reflect the total number of DHS-approved H-1B petitions for that year. For FY 2025, DHS approved 380,796 total petitions. Approximately 93.5% of new certifications (106,325) were based on LCAs using OEWS data, reflecting that about 6.5% rely on permitted alternative sources such as private wage surveys. Performing the calculations listed in Exhibit 7 results in an annual wage transfer of approximately $1.46 billion in Year 1, $6.3 billion in Year 4, and rising to over $9.3 billion in Year 6 and beyond.

Existing prevailing wage data from the Foreign Labor Certification (FLC) Data Center, accessible at *https://flag.dol.gov*, contains wage data for each SOC code and geographic area combination that are not readily available in the public OEWS data used to estimate new prevailing wage levels. For example, when a wage is not releasable for a geographic area, the prevailing wage available through the FLC Data Center may be computed by BLS for the geographic area plus its contiguous areas. Additionally, in

publicly available OEWS data, some percentiles are missing for certain combinations of SOC codes and geographic areas. These two factors result in a small number of certifications that cannot be matched to a new prevailing wage level.[235] For these unmatched certifications, we estimate wage impacts as follows: First, we calculate the average wage impact per worker for the relevant cohort and fiscal year. Second, we apply this average to all workers associated with unmatched certifications, producing estimated annual wage impacts for each calendar year of employment. Finally, we add these estimated impacts to the directly calculated wage impacts from matched certifications to produce the total wage impact for each cohort in each calendar year.

The Department determined the total impact of the NPRM prevailing wage levels for each length cohort in each calendar year by summing the wage impacts for all certifications in each year and averaging the totals. The wage impacts for each cohort and calendar year are presented in Exhibit 7. Some calendar years are excluded from the inputs underlying the exhibit because the available data (FY 2023-2025 certifications) does not capture all certifications active during those years. For example, calendar year 2025 includes workers from FY 2025 certifications but would also include workers from FY 2026 certifications, which are not yet available. Therefore, calendar year 2025 is excluded to avoid incomplete estimates.

With the increases in prevailing wage levels under this NPRM, some employers may reduce their demand for labor—either by hiring fewer alien workers or by adjusting staffing patterns—because higher wages increase the cost of employment. These adjustments could include substituting toward incumbent workers or reallocating hours, which may partially offset the expected increase in new hires. While the precise

[235] In FY 2022, 10.87 percent of certifications do not match, in FY 2023 11.41 percent, and FY 2024 17.02 percent.

magnitude of these behavioral responses is uncertain, the Department provides a discussion of these potential effects and their implications in the following analysis.

The labor economics literature contains substantial research on how wages affect demand for labor. In the context of the H-1B program, the relevant measure is the long-run own-wage elasticity of labor demand, which describes how firms adjust their labor demand in response to wage changes. Estimates of labor demand elasticities vary considerably depending on industry, skill-level, region, and other factors. A commonly cited average long-run own-wage elasticity of labor demand is −0.3[236] meaning a 10 percent increase in an employer's total wage payments would be expected to result in a 3% decrease in the quantity of labor demanded by the employer in the long run, on average.[237]

The Department's baseline analysis projects an average annual undiscounted wage transfer of $7.07 billion under the proposed rule (see Exhibit 7 and accompanying text). The average annual increase in wage transfers is a 6.1 percent increase in wage payments, which would imply a potential reduction in labor demand of 1.83 percent (6.1 * .3). U.S. employers would likely pay higher wages to H-1B workers or replace them with U.S. workers where possible. However, if U.S. employers were constrained in their ability to pay higher wages and reduced demand accordingly, the wage transfer would decline by approximately 1.83 percent, from $7.07 billion to approximately $6.94 billion.

b. Non-Quantifiable Transfer Payments

This section discusses the non-quantifiable transfer payments related to changes to the computation of the prevailing wage levels. Specifically, the Department did not

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[236] For a full discussion of labor demand elasticity heterogeneity see Lichter, A., Peichl, A., & Siegloch, S. (2015). The own-wage elasticity of labor demand: A meta-regression analysis. European Economic Review, 94-119: Retrieved from: https://www.econstor.eu/bitstream/10419/93299/1/dp7958.pdf.

[237] This value is the best-guess in seminal work by Hamermesh, D.H. (1993). Labor Demand. Princeton University Press.

quantify transfer payments associated with certifications under the Permanent Labor Certification Program because they are expected to be de minimis.

The PERM programs have a large proportion of certifications issued annually to alien workers that are working in the U.S. at the time of certification and would have changes to wages under the NPRM prevailing wage. Prior to the PERM certification, these beneficiaries are typically working under H-1B, H-1B1, and E-3 temporary visas and wage transfers for these PERM certifications are therefore already factored into our wage transfer calculations for H-1B, H-1B1, and E-3 temporary visas. Below, Exhibit 8 illustrates the percentage of PERM certifications that are on H-1B, H-1B1, or E-3 temporary visas, the percent that are not on a temporary visa and/or are not currently in the U.S. and would therefore enter on an EB-2 or EB-3 visa, and all other visa classes.

Exhibit 8—PERM Certifications by Class of Admission, FY20-FY24

Category	FY20	FY21	FY22	FY23	FY24	Average percentage of total
Not on a temporary visa/not currently residing in the United States	1946	2166	2,196	3,653	3,692	5.5
H-1B nonimmigrant	36570	46328	27,351	32,875	20,588	65.5
H-1B1 nonimmigrant	61	64	36	32	25	0.1
E-3 nonimmigrant	180	262	101	113	72	0.3
All Other Visa Classifications*	14957	18661	10,778	16,042	11,128	28.6
Total	53714	67481	40,462	52,715	35,505	100
* Other classes of admission include: A1/A2, L-1, F-1, A-3, B-1, C-1, TN, C-3, E-2, B-2, D-1, D-2, H-4, O-1, E-1, EWI, J-1, TPS, F-2, L-2, G-4, H-2A, G-1, G-5, H-1A, Parolee, P-1, J-2, H-3, I, M-1, R-1, O-2, M-2, P-3, O-3, VWT, TD, P-2, P-4, Q, VWB, R-2, N, S-6, T-1, V-2, T-2, K-4, U-1.						

About 10 percent of PERM certifications are issued annually by OFLC to alien workers who do not currently reside in the U.S. and would enter on immigrant visas in the EB-2 or EB-3 preference category. Employment-based immigrant visa availability and corresponding wait times change regularly for different preference categories and

countries. Alien workers from countries with significant visa demand consistently experience delays, at times over a decade. Therefore, employers would not have wage obligations until at the earliest, the very end of the 10-year analysis period and the number of relevant certifications is a relatively small percent of all PERM certifications; the Department therefore has not included associated wage transfers in the analysis.

4. Benefits Discussion

This section discusses the non-quantifiable benefits related to changes to the computation of the prevailing wage levels.[238]

The Department's increase in the prevailing wages for the four wage levels is expected to result in multiple benefits that the Department is unable to quantify but discusses qualitatively. One benefit of the NPRM's increase in prevailing wages is the economic incentive to increase employee retention, training, and productivity which would increase benefits to both employers and U.S. workers. The increase in prevailing wages is expected to induce employers—particularly those using the permanent and temporary visa programs—to fill critical skill shortages, to minimize labor costs by implementing retention initiatives to reduce employee turnover, and/or to increase the number of work hours offered to similarly employed U.S. workers. Furthermore, for employers in the technology and health care sectors, this could mean using higher wages to attract and hire the industry's most productive U.S. workers and to provide them with the most advanced equipment and technologies to perform their work in the most efficient manner.

Ensuring that skilled occupations are not performed at below-market wage rates by alien workers would provide greater incentives for firms to expand education and job

[238] As noted elsewhere in this analysis, the proposed rule would be expected to shift the allocation of H-1B visas from lower-productivity to higher-productivity workers, and given the existing cap on such visas, may have little or no effect on the number granted. Thus, analysis of changes in societal surplus would not be as straightforward here, where the result would be a negative benefit, as it was for the Department's recent rulemaking related to H-2A visas (RIN 1205-AC24; 90 FR 47914).

training programs. These programs can attract and develop the skills of a younger generation of U.S. workers to enter occupations that currently rely on elevated levels of alien workers. (The Department requests comment on not-yet-quantified costs—for example, costs of training programs or equipment upgrades—that would accompany any such benefits.) There is some evidence that the existing prevailing wage levels offer opportunities to use lower-cost alternatives to U.S. workers doing similar jobs by offering two wage levels below the median wage. For example, in FY 2024, 62.6 percent of H-1B workers filed LCAs at either the first or second wage level, meaning a substantial majority of workers in the program could be paid wages well below the median wage for their occupational classification. While this analysis uses the existing distribution of wage levels as a baseline, the Department acknowledges that the composition of H-1B wage levels could shift under the proposed rule. Specifically, the DHS weighted lottery and higher prevailing wage requirements may increase the share of Level III and Level IV positions over time. This potential change is discussed qualitatively in the analysis.

Glennon's (2024) literature review touches on relevant issues, including the variety of productivity contributions associated with the H-1B program—as illustrated by, for example, estimates of innovation-related outcomes differing substantially depending on whether the analyzed data set includes employers who submit applications promptly (on a rolling basis) or focuses only on employers who wait until the last potential application day.[239] Because workers with greater skills tend to be more productive, and therefore command higher wages, raising the prevailing wage levels would lead to the limited number of H-1B visas going to higher-skilled alien workers, which would likely increase the spillover economic benefits associated with high-skilled immigration. This reallocation is expected to increase not only direct output per worker

[239] Glennon, Britta (2024), "Skilled Immigrants, Firms, and the Global Geography of Innovation," *Journal of Economic Perspectives* 38(1), pp. 3-26. See, especially, Glennon's footnote 3.

but also broader economic spillovers, such as higher rates of patenting, technology diffusion, and firm-level productivity growth documented in the literature. By concentrating visa allocations among workers at the upper end of the skill distribution, the proposed rule amplifies these benefits, which extend beyond the hiring firm to the wider economy through innovation and knowledge transfer.[240]

5. Summary of the Analysis

Exhibit 9 below summarizes the costs and transfer payments of the NPRM. The Department estimates the annualized cost of the NPRM at $3.53 million and the annualized transfer payments (from H-1B, H-1B1, and E-3 employers to some combination of other such employers and workers) at an upper bound of $6.56 billion, at a discount rate of 7 percent. The Department did not estimate any cost savings.

Exhibit 9—Estimated Monetized Costs and Transfer Payments of the NPRM

	Costs (million $)	**Transfer payments (billion $) (upper bound)**
2026	5.17	1.46
2027	2.98	3.26
2028	2.57	4.81
2029	2.1	6.36
2030	2.09	7.91
2031	3.32	9.46
2032	2.32	9.55
2033	2.32	9.31
2034	2.32	9.31
2035	2.32	9.31
Undiscounted Total	32	70.73
10-Year Total with a Discount Rate of 3%	28.38	58.46
10-Year Total with a Discount Rate of 7%	24.59	46.09
10-Year Average	3.2	7.07
Annualized with a Discount Rate of 3%	3.33	6.85
Annualized with a Discount Rate of 7%	3.53	6.56

[240] Barabuffi, G., Chabert, M., & Izzo, F. (2025). Knowledge Spillovers through High-Skilled Migration Networks. Industry and Innovation, 32(8), 884–914. https://doi.org/10.1080/13662716.2025.2451398.

6. Regulatory Alternatives

In developing this rule, the Department considered several alternative approaches to revising the prevailing wage level methodology. Each alternative was evaluated for its consistency with the Department's statutory obligations under the Immigration and Nationality Act (INA), its responsiveness to the policy direction set forth in the September 19, 2025 Presidential Proclamation, and its administrative feasibility and legal defensibility. The Department ultimately selected the proposed percentile structure (34th, 52nd, 70th, and 88th percentiles) as the most balanced and effective approach. However, the following alternatives were considered:

a. Alternative 1: Using Experience Benchmarking for Adjusting Wage Levels

The Department also seeks public comment on an alternative approach to revising prevailing wage levels using a methodology called Experience Benchmarking. Under this alternative, prevailing wage levels for the H-1B, H-1B1, E-3, and PERM programs would be adjusted using a methodology that benchmarks wages to workers with comparable education and experience in the same occupation and geographic area.

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[241]. The relationship between these data sources would be

[241] The ACS is the largest ongoing household survey in the United States, surveying approximately 3.5 million households each year. It is administered by the U.S. Census Bureau in the Department of Commerce, collects detailed information on earnings, educational attainment, age, occupation, and geography, and widely used for federal program administration. For more information on the ACS, please see https://www.census.gov/programs-surveys/acs.html.

modeled using the Mincer earnings equation, which is a natural logarithm of wages as a function of education and experience.[242]

The Department is considering this alternative to potentially improve the comparison of the wages of alien workers to those of similarly qualified U.S. workers. As noted previously, today prevailing wage levels are derived from the overall wage distribution within an occupation and geographic area and are applied based on the employer's description of the minimum job requirements for the position. 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 and 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. Experience Benchmarking seeks to address this limitation 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, thereby producing prevailing wages that more closely reflect the wages paid to similarly qualified workers in the U.S. labor market.

Because the ACS does not directly measure actual labor market experience, the methodology would estimate "potential experience" using a commonly accepted definition as age minus years of schooling minus age when schooling begins (often

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[242] The Mincer logarithm of wages equation is the foundational model in empirical labor economics for estimating the returns to education and experience. See Thomas Lemieux, "The 'Mincer Equation' Thirty Years After Schooling, Experience, and Earnings," in Shoshana Grossbard, ed., Jacob Mincer: A Pioneer of Modern Labor Economics (New York: Springer, 2006), ch. 11 (calling the Mincer equation "one of the most widely used models in empirical economics" and concluding it "remains an accurate benchmark for estimating wage determination equations"). See also Solomon W. Polachek, "Earnings Over the Life Cycle: The Mincer Earnings Function and Its Applications," Foundations and Trends in Microeconomics 4, no. 3 (2008): 165–272. Also see George J. Borjas, Labor Economics, 7th ed. (New York: McGraw-Hill, 2016), p. 244.

six).[243] Using the OEWS 50th (median), 62nd, 75th, and 90th percentiles for each occupation and geographic area as the base wages, the Department would use public-use microdata from the ACS to generate Mincer wage equations for each occupation among native-born American workers only**,** modelling the relationship between (log) earnings, educational attainment, and potential experience (measured by age) within each occupation, controlling for area of employment fixed effects. The output of these models would be a matrix of ratios (or wage premia) comparing the expected earnings of U.S. workers with each combination of education and potential experience to the overall occupational median, as measured in the ACS. The Department would then apply these ACS-derived ratios to each of the OEWS percentiles to produce Experience Benchmarked wage levels.

Under this alternative, the four OEWS wage levels would reflect variations attributable to characteristics of both the occupation and of the alien worker that the Department will not measure directly such as specialized skills, industry-specific premia, position-specific duties, and the level of supervision received or provided. Each combination of education and experience in each occupation and geographic area would generate a set of four wage levels, one at each level, as follows:

- Level I: Typical (50th percentile among workers with same occupation, area, education, and experience). Level I reflects the median level of skills and typical duties for workers in the occupation and location with comparable education and experience. This would be the prevailing wage due an alien worker with a given

[243] The concept of "potential experience," defined as age minus years of schooling minus age when schooling begins (often six) was introduced by Mincer (1974) and has been the standard approach in labor economics for over fifty years when direct experience data are unavailable. See Lemieux (2006), supra (noting that "potential experience" is the standard measure in the Mincer specification). In addition, Zoghi (2010) directly compared labor composition indexes calculated with imputed experience measures versus age groups and found that the results were "nearly identical," concluding "it seems reasonable to use the simpler and more transparent age group variable." See Cindy Zoghi, "Measuring Labor Composition: A Comparison of Alternate Methodologies," in Katharine G. Abraham, James R. Spletzer, and Michael Harper, eds., Labor in the New Economy (Chicago: University of Chicago Press for NBER, 2010), ch. 12, pp. 457–485.

credential profile. For example, the prevailing wage for a software developer with a master's degree and five years of experience would be the median wage (that is, the new OEWS Level I wage) for software developers in the same area who also have a master's degree and approximately five years of experience—not the median for all software developers regardless of credentials.

- Level II: Specialized (62nd percentile among workers with same occupation, area, education, and experience). Level II reflects a position requiring specialized knowledge, duties, or other characteristics that command a premium above the typical wage for workers with comparable credentials.
- Level III: Demanding (75th percentile among workers with same occupation, area, education, and experience). Level III reflects a position requiring a notably higher degree of proficiency, specialized expertise, or responsibility than is typical, commanding more than what three-quarters of similarly qualified workers earn in the same occupation and area.
- Level IV: Highly Demanding (90th percentile among workers with same occupation, area, education, and experience). Level IV reflects the highest-skilled positions among similarly qualified workers, representing the upper tier of complexity, responsibility, and autonomy within the occupation at the relevant education and experience level. Such positions may involve substantially less supervision from a manager than is typical, or may involve the incumbent providing active supervision of a greater number of subordinates than is typical for comparably qualified workers in that occupation.

Under experience benchmarking, the Level I requirement at the 50th percentile guarantees that an alien worker is never paid less than the median native-born worker with the same occupation, education, and experience in the same location. The higher wage levels (Levels II–IV) allow an employer to pay for exceptional talent to have more

chances in the lottery. The reason for these specific percentiles (50th, 62nd, 75th, and 90th) is that they are close to dividing the upper half of the distribution equally. These levels differ from the levels as proposed because the adjustments for experience and education are based directly on real data.

To illustrate how the methodology would work, consider a hypothetical example. If ACS data and Mincer wage equation estimated that U.S. accountants with 10 years of experience and a master's degree typically earn 20 percent more than the median accountant nationwide, the Experienced Benchmarked ratio for that education-experience combination in accounting would be expressed as a wage premia factor of 1.2. Then, to compute the Level I prevailing wage for an employer seeking visa labor certification to employ an alien worker as an accountant in Dayton, Ohio, with 10 years of experience and a master's degree, the Department would take the OEWS 50th percentile for accountants in the Dayton MSA (currently $78,710) and multiply it by 1.2, yielding an experience-benchmarked Level I prevailing wage of $94,452. The Level II prevailing wage would apply the same 1.2 ratio to the OEWS 62nd percentile; Level III to the 75th percentile; and Level IV to the 90th percentile. This calculation would be repeated for every education-experience combination, in every occupation, in every geographic area covered by the OEWS, and separately for the American Competitiveness and Workforce Investment Act (ACWIA) industries, as required by statute Thus, under this alternative, experience and education would be considered explicitly, with the wage levels corresponding to the remainder of those factors that determine earnings in the occupational classification: skills, level of supervision, and any other factors that might determine the wage premium that an individual worker can command compared to other workers in the same occupation, area, and with the same level of experience and education. If this approach were adopted for PERM, the prevailing wage associated with the LCA would be the higher of: 1) the Level I OEWS Level corresponding to the

minimum education and experience requirements of the position, and 2) if the alien worker is an H-1B, H-1B1, or E-3 worker, the prevailing wage identified on the Labor Condition Application certified by DOL and listed on the DHS/USCIS I-129 Petition for Nonimmigrant Worker approved for that alien worker.

For LCA under this alternative, the OFLC search would be updated to reflect the prevailing wage levels of different education and experience profiles, and the employer would reference this when submitting the LCA. If the employer did not have an alien worker identified, it would file the LCA for each education-experience profile it would be considering for the role, and the eventual hire would be paid under the relevant LCA matching that alien worker's education-experience profile.

The Department invites public comment on all aspects of this alternative, including any strengths and limitations (e.g., sample size, occupational and geographic area coverage) of using the ACS; effectiveness of using age as a proxy for experience; efficacy of employing Mincer wage equations for Experience Benchmarking prevailing wage levels; appropriateness of establishing the base OEWS wage levels at the 50th, 62nd, 75th, and 90th percentiles for each occupation and geographic area; and statistical validity of applying the resulting ratios from the ACS to the corresponding OEWS wage levels.

The primary benefits are threefold. First, the proposal essentially ends the practice of wage arbitrage which improves the standing of American workers and the benefits that flow from strong middle-class employment. Second, the proposal substantially improves the ability of the visa programs to screen for exceptional talent and ability. Third, the proposal reduces the ability of employers to under classify workers using strategic job descriptions.

The Department also invites comment on whether there are other readily accessible and appropriate sources of data and methods for estimating education-

experience wage premia, and on whether other federal data sources—including but not limited to administrative records that may enable direct tabulations rather than a model-based approach—could provide more precise or more comprehensive estimates of the returns to education and experience within occupations in relation to the OEWS wage levels.

Finally, the Department acknowledges that determining prevailing wages under this alternative will require employers to collect information about the alien worker's actual education and experience when the employer submits an application. For the H-1B, H-1B1, and E-3 visa classifications, this information could be collected on a revised information collection for the ETA-9035, *Labor Condition Application for Nonimmigrant Workers* (OMB Control No. 1205-0310). In the PERM program, this information could be collected through revisions to the ETA-9141 Application for Prevailing Wage Determination (OMB Control No. 1205-0508), which would also cover employers seeking a prevailing wage determination from the Department under the H-1B, H-1B1, and E-3 visa classifications, and, where relevant, through forms used in related programs, in a manner similar to Appendix A (Foreign Worker Information) of the Form ETA-9089, *Application for Permanent Employment Certification* (OMB Control No. 1205-0451). Because this alternative would base prevailing wage determinations on the alien worker's actual education and experience rather than the employer's description of the minimum job requirements for the position, the Department invites public comment on whether this approach is more consistent with the statutory requirements for both the H-1B and PERM programs, the administrative feasibility and burden on employers and applicants to provide information about the alien worker's qualifications on revised Forms ETA-9035 and 9141 and in a manner similar to the current authorized collection on the Form ETA-9089, Appendix A, and whether this alternative better protects similarly employed U.S. works from adverse effects. The primary burdens we anticipate

are that employers will need to learn a new system and no longer be able to commit wage arbitrage.

b. Alternative 2: Eliminate the Ability to Use Private Wage Surveys

Under this alternative, the Department would remove the option for employers to submit private wage surveys and instead require all prevailing wage determinations to rely exclusively on the Bureau of Labor Statistics' Occupational Employment and Wage Statistics (OEWS) survey. This approach would create a single streamlined source for prevailing wages, reducing administrative complexity and compliance costs for employers—particularly small businesses—by eliminating the need to commission, validate, and submit private surveys. Private surveys often impose significant costs on employers, including fees for survey data and legal expenses to ensure methodological compliance. By standardizing wage determinations through OEWS, the Department would minimize these burdens while maintaining consistency and transparency in wage-setting practices. This alternative therefore represents a less economically burdensome option for small entities compared to the current system, which allows for multiple wage sources and associated compliance obligations.

Private wage surveys have historically been permitted to provide employers flexibility in cases where government data sources were unavailable or insufficiently granular for certain occupations or geographic areas. The rationale was that private surveys could capture niche labor markets and specialized roles not fully reflected in OEWS data. However, the Department's analysis indicates that OEWS now provides comprehensive coverage across occupations and regions, reducing the need for alternative sources.

Despite these benefits, the Department ultimately rejected this alternative. As discussed earlier in this NPRM, retaining private wage surveys in limited circumstances preserves employer flexibility, mitigates potential adverse impacts on businesses

operating in specialized labor markets, and balances reliance interests with the statutory mandate to protect U.S. workers. For some employers-particularly start-ups, small businesses, or those operating in emerging or highly specialized fields-private surveys may offer the most accurate reflection of market wages when OEWS data is insufficient or unavailable. Eliminating this option entirely could disrupt longstanding compliance practices and impose disproportionate burdens on such employers.

Additionally, while private surveys can be expensive and administratively complex to validate, historical data indicate that they typically produce wages approximately 20 percent higher than OEWS-based prevailing wages, which could significantly increase costs for employers relying on this option. The Department recognizes these trade-offs and, therefore, has chosen to retain the use of private surveys in limited circumstances. This approach preserves employer flexibility, mitigates potential adverse impacts on businesses operating in specialized labor markets, and balances reliance interests with the statutory mandate to protect U.S. workers. To ensure integrity, the Department will monitor the use of private surveys to prevent abuse and ensure compliance, reserving the right to reject any private survey that does not meet methodological standards or otherwise fails to satisfy regulatory requirements.

In summary, while the benefits of allowing private wage surveys have diminished as OEWS coverage has improved, the Department determined that a complete elimination of private surveys would not adequately account for the needs of employers in specialized labor markets or those with legitimate reliance interests. The Department invites public comment on this approach and on whether further limitations or safeguards on the use of private wage surveys would be appropriate.

c. Alternative 3: National Wage Standard for Remote and Distributed Work

In response to the structural shift toward remote work, the Department considered replacing area-specific prevailing wages with a national wage standard for each

occupational classification. This approach would simplify compliance and reflect the nationalization of high-skill labor markets. However, the Department declined to adopt this alternative due to:

- Statutory language in the INA requiring prevailing wages to be based on the "area of intended employment."
- The need for further stakeholder engagement and legal analysis to assess the feasibility of redefining geographic wage standards.

The Department may revisit this alternative in future rulemakings as remote work trends continue to evolve.

Under this alternative, the Department would replace area-specific prevailing wages with a single national wage standard for each occupational classification. This approach would simplify compliance and reflect the increasing prevalence of remote work, which has reduced the relevance of geographic wage differentials. However, this alternative would likely result in significant cost increases for employers in lower-wage regions, as they would be required to pay wages aligned with national averages rather than local market rates. Preliminary modeling suggests that adopting this alternative could reduce employer labor costs by an incremental approximately $10,000 annually, which is substantially higher than the costs projected under the proposed rule.[244] While this approach could enhance equity and reduce administrative complexity, the Department determined that the statutory requirement to base prevailing wages on the "area of intended employment" and the potential for disproportionate impacts on employers in lower-cost regions outweighed the benefits at this time.

[244] Analysis based on FY 2020-2024 LCAs and uses current prevailing wage levels to determine the difference.

C. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121 (Mar. 29, 1996), hereafter jointly referred to as the RFA, requires agencies to prepare an initial regulatory flexibility analysis (IRFA) when proposing, and a final regulatory flexibility analysis (FRFA) when issuing, regulations that will have a significant economic impact on a substantial number of small entities. The Department conducted the analysis below of the effect on small entities from the proposed rule and, based on that analysis, expects that this rule will have a significant economic impact on a substantial number of small entities that employ H–1B workers.

1. Why the Department Is Considering Action

The Department is considering action to revise the prevailing wage determination methodology because the current wage levels do not adequately reflect the wages paid to U.S. workers similarly employed to alien workers in the H-1B, H-1B1, E-3, and PERM programs. The Department has determined that the existing methodology, which was developed without formal rulemaking and lacks a robust economic justification, may contribute to wage suppression and displacement of U.S. workers, particularly in sectors with high concentrations of alien workers.

Evidence from academic research, government data, and investigative reporting indicates that prevailing wages under the current structure are often set below market rates. This creates incentives for employers to prefer lower-paid alien workers over comparably qualified U.S. workers, undermining the statutory intent of the INA to protect the wages and working conditions of U.S. workers. For example, studies have shown that H-1B workers are frequently paid less than their U.S. counterparts, and that

some employers use the program to replace U.S. workers rather than to supplement the domestic workforce.

Moreover, the Department has concluded that the current four-tier wage structure, as implemented, does not sufficiently differentiate among workers based on experience, education, and responsibility, as required by 8 U.S.C. 1182(p)(4). The Department's analysis also found that the methodology used to calculate wage levels—particularly the use of the mean of the bottom third of the wage distribution for Level I—does not align with labor market realities or the statutory requirement to prevent adverse effects on U.S. workers.

Given these findings, and consistent with the Department's statutory obligations and the President's directive to strengthen wage protections for U.S. workers, the Department is proposing to revise the prevailing wage methodology to better reflect actual market wages and ensure that the employment of alien workers does not adversely affect the wages and job opportunities of U.S. workers.

2. Objectives of and Legal Basis for the NPRM

The Department's objective in issuing this NPRM is to strengthen wage protections for U.S. workers by revising the methodology used to determine prevailing wage levels under the H-1B, H-1B1, E-3, and PERM programs. The current wage structure, which has remained largely unchanged since its inception, does not adequately reflect the wages paid to U.S. workers similarly employed to alien workers in these programs. As a result, it may contribute to wage suppression, displacement of U.S. workers, and distortion of labor market conditions in high-skill sectors.

This NPRM seeks to ensure that the employment of alien workers does not adversely affect the wages and working conditions of U.S. workers, consistent with the Department's statutory obligations under the INA. Specifically, section 212(a)(5)(A) of the INA (8 U.S.C. 1182(a)(5)(A)) requires the Secretary of Labor to certify that the

employment of alien workers would not adversely affect the wages and working conditions of similarly employed U.S. workers. In the context of the H-1B, H-1B1, and E-3 programs, section 212(n)(1)(A) and 212(t)(1)(A) (8 U.S.C. 1182(n)(1)(A) and 1182(t)(1)(A)) further requires that employers pay the greater of the actual wage or the prevailing wage for the occupational classification in the area of intended employment.

Additionally, section 212(p)(4) of the INA (8 U.S.C. 1182(p)(4)) mandates that any government survey used to determine prevailing wages must provide at least four levels of wages commensurate with experience, education, and level of supervision. The Department has determined that the current implementation of this four-tier structure does not sufficiently differentiate among workers based on these statutory factors and may understate the true market wages for many occupations.

The NPRM is also responsive to the President's directive in the September 19, 2025, Proclamation titled "Restriction on Entry of Certain Nonimmigrant Workers," which instructed the Secretary of Labor to initiate rulemaking to revise prevailing wage levels to better protect U.S. workers. The Department's action is grounded in its longstanding authority to administer the labor certification process and to interpret and implement the INA's wage protections through reasonable and evidence-based methodologies. In sum, the NPRM is intended to align prevailing wage levels more closely with actual market wages; reduce the incentive to prefer alien workers over U.S. workers based on wage differentials; ensure compliance with statutory requirements under 8 U.S.C. 1182(a)(5)(A), 1182(n)(1)(A), 1182(t)(1)(A), and 1182(p)(4); and promote the integrity and effectiveness of the Department's foreign labor certification programs.

3. Estimating the Number of Small Entities Affected by the Rulemaking

The Department used the FY 2024 H-1B cap-subject petitions data provided by the DHS.[245] There were 13,602 unique small H-1B employers with data on the number of employees and annual revenue that met the Small Business Administration's size standards. These 13,602 unique small H-1B employers represent petitions with start dates on or after 10/1/2024 and before 10/1/2025.

To provide clarity on the types of industries impacted by this regulation, Exhibit 10 shows the number of unique H-1B small entity employers within the top 10 most prevalent industries at the 6-digit and 4-digit NAICS code level.

Exhibit 10—Number of H-1B Unique Small Employers by NAICS Code

6-Digit NAICS	Description	Number of H-1B Unique Small Employers	Percentage of Employers
513210	Software Publishers	143	1.05
518210	Data Processing, Hosting, and Related Services	150	1.1
541110	Office of Lawyers	237	1.74
541211	Offices of Certified Public Accountants	153	1.12
541310	Architectural Services	210	1.54
541330	Engineering Services	533	3.92
541511	Custom Computer Programming Services	7990	29.33
541512	Computer Systems Design Services	517	3.8
541519	Other Computer Related Services	288	2.12
541714	Research and Development in Bio-technology (except Nanobiotechnology)	177	1.3
Other NAICS		7,024	52.96
Total		13,602	100%

4. Compliance Requirements of the NPRM, Including Reporting and Recordkeeping

The Department has considered the incremental costs for small entities from the baseline (i.e., the current practices for complying, at a minimum, with the regulations governing permanent labor certifications at 20 CFR part 656 and labor condition

[245] For the RFA analysis, three datasets were combined: DOL's LCA data for FY 2024; employer data from USCIS Form I-129 petitions filed in FY 2024; and the SBA size standards. This dataset includes Wage Levels I through IV.

applications at 20 CFR part 655, subpart H) to this NPRM. We estimated the cost of (a) the time to read and review the NPRM and (b) wage costs. These estimates are consistent with those presented in the E.O. 12866 section.

5. Calculating the Impact of the NPRM on Small Entities

The Department estimates that small entities using the H-1B program would incur a one-time cost of $60.94 to familiarize themselves with the rule.[246]

In addition to the rule familiarization costs, each small entity using the H-1B program may have an increase in the annual wage costs due to the revisions to the wage structure if they currently offer a wage lower than the NPRM prevailing wage levels. For each small entity, we estimated the annual wage cost and added it to the rule familiarization costs to measure the total impact of the NPRM on the small entity. The average wage cost per small entities is estimated at $20,298. Small entities with petitions filed in FY 2024 can have wage obligations in calendar years 2024 and 2025, depending on when their employment period starts and the length of the employment period.

The Department determined the proportion of each small entity's total revenue affected by the costs of the NPRM to determine if the NPRM would have a significant impact upon a substantial number of small entities. The cost impacts included the rule familiarization costs and the wage costs introduced by the NPRM. The Department used a total cost estimate of 3 percent of revenue as the threshold for a significant individual impact and assumed that 15 percent of impacted small entities incurring an impact that exceeds the 3 percent, “significant” threshold as the threshold for a substantial number of on small entities.

[246] $60.94 = 1 hour × $60.94, where $60.94 = $38.33 + ($38.33 × 42%) + ($38.33 × 17%).

The Department has used a threshold of three percent of revenues in prior rulemakings for the definition of significant economic impact.[247] This threshold is also consistent with that sometimes used by other agencies.[248] The Department also believes that its assumption that 15 percent of small entities would be substantially affected experiencing a significant impact to determine whether the rule has a substantial impact on small entities is appropriate. The Department has used the same threshold in prior rulemakings for the definition of substantial number of small entities.[249] Of the 13,538 unique small employers with revenue data, up to 18 percent of employers would have more than 3 percent of their total revenue affected in 2025 (2,394/13,538). As such, the Department expects that this rule would have a significant economic impact on a substantial number of small entities affected. Exhibit 11 provides a breakdown of small employers by the proportion of revenue affected by the costs of the NPRM. Exhibits 12 through 22 provide breakdowns of small employers by the proportion of revenue affected by the costs of the NPRM for the top ten most prevalent industries at the six-digit NAICS code level.

[247] See, e.g.,79 FR 60634 (October 7, 2014, Establishing a Minimum Wage for Contractors), 81 FR 39108 (June 15, 2016, Discrimination on the Basis of Sex), and 84 FR 36178 (July 26, 2019, Proposed Rule for Temporary Agricultural Employment of H-2A Nonimmigrants in the United States).
[248] See, e.g.,79 FR 27106 (May 12, 2014, Department of Health and Human Services rule stating that under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues.
[249] See, e.g.,79 FR 60633 (October 7, 2014, Establishing a Minimum Wage for Contractors) and 84 FR 36178 (July 26, 2019, Proposed Rule for Temporary Agricultural Employment of H-2A Nonimmigrants in the United States).

Exhibit 11—Cost Impacts as a Proportion of Total Revenue for Small Entities

Proportion of Revenue Impacted						
Top 10 NAICS Codes	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
513210	98 (69%)	23 (16%)	22 (15%)	6 (4%)	6 (4%)	10 (7%)
518210	94 (63%)	24 (16%)	32 (21%)	12 (8%)	5 (3%)	15 (10%)
541110	113 (48%)	73 (31%)	51 (22%)	23 (10%)	14 (6%)	14 (6%)
541211	96 (63%)	43 (28%)	14 (9%)	7 (5%)	6 (4%)	1 (1%)
541310	130 (62%)	51 (24%)	29 (14%)	18 (9%)	6 (3%)	5 (2%)
541330	380 (71%)	90 (17%)	63 (12%)	24 (5%)	20 (4%)	19 (4%)
541511	1194 (30%)	830 (21%)	1966 (49%)	395 (10%)	518 (13%)	1053 (26%)
541512	221 (43%)	107 (21%)	189 (37%)	47 (9%)	52 (10%)	90 (17%)
541519	121 (42%)	61 (21%)	106 (37%)	25 (9%)	21 (7%)	60 (21%)
541714	147 (83%)	16 (9%)	14 (8%)	5 (3%)	3 (2%)	6 (3%)
All Other NAICS	5115 (71%)	1067 (15%)	1022 (14%)	343 (5%)	303 (4%)	376 (5%)
Total	7709 (57%)	2385 (18%)	3508 (26%)	905 (7%)	954 (7%)	1649 (12%)

Exhibit 12—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 513210

NAICS 513210, Software Publishers								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	32	$23,374	9 (28%)	4 (12%)	19 (59%)	5 (16%)	4 (12%)	10 (31%)
$1M to less than $5M	47	$23,256	27 (57%)	17 (36%)	3 (6%)	1 (2%)	2 (4%)	0 (0%)
$5M to less than $10M	24	$21,869	23 (96%)	1 (4%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$10M to less than $50M	40	$23,047	39 (98%)	1 (2%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Exhibit 13—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 518210

NAICS 518210, Data Processing, Hosting, and Related Services								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	34	$37,122	6 (18%)	5 (15%)	23 (68%)	5 (15%)	3 (9%)	15 (44%)
$1M to less than $5M	60	$23,909	33 (55%)	18 (30%)	9 (15%)	7 (12%)	2 (3%)	0 (0%)
$5M to less than $10M	14	$27,416	13 (93%)	1 (7%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$10M to less than $50M	42	$22,200	42 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Exhibit 14—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541110

NAICS 541110, Office of Lawyers								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	83	$21,027	7 (8%)	26 (31%)	50 (60%)	22 (27%)	14 (17%)	14 (17%)
$1M to less than $5M	105	$21,129	57 (54%)	47 (45%)	1 (1%)	1 (1%)	0 (0%)	0 (0%)
$5M to less than $10M	36	$14,638	36 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$10M to less than $50M	13	$17,110	13 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Exhibit 15—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541211

NAICS 541211, Offices of Certified Public Accountants								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	26	$22,900	0 (0%)	14 (54%)	12 (46%)	6 (23%)	5 (19%)	1 (4%)
$1M to less than $5M	77	$18,699	48 (62%)	27 (35%)	2 (3%)	1 (1%)	1 (1%)	0 (0%)
$5M to less than $10M	29	$18,413	27 (93%)	2 (7%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$10M to less than $50M	21	$19,667	21 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Exhibit 16—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541310

NAICS 541310, Architectural Services								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	54	$16,361	8 (15%)	17 (31%)	29 (54%)	18 (33%)	6 (11%)	5 (9%)
$1M to less than $5M	103	$14,277	69 (67%)	34 (33%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$5M to less than $10M	40	$13,951	40 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$10M to less than $50M	13	$15,912	13 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Exhibit 17—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541330

NAICS 541330, Engineering Services								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	81	$33,675	5 (6%)	25 (31%)	51 (63%)	18 (22%)	15 (19%)	18 (22%)
$1M to less than $5M	185	$23,776	122 (66%)	52 (28%)	11 (6%)	5 (3%)	5 (3%)	1 (1%)
$5M to less than $10M	118	$24,004	107 (91%)	10 (8%)	1 (1%)	1 (1%)	0 (0%)	0 (0%)
$10M to less than $50M	149	$25,990	146 (98%)	3 (2%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Exhibit 18—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541511

NAICS 541511, Custom Computer Programming Services								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	1509	$70,698	39 (3%)	98 (6%)	1372 (91%)	151 (10%)	299 (20%)	922 (61%)
$1M to less than $5M	1382	$77,256	345 (25%)	503 (36%)	534 (39%)	202 (15%)	204 (15%)	128 (9%)
$5M to less than $10M	587	$78,795	364 (62%)	176 (30%)	47 (8%)	32 (5%)	12 (2%)	3 (1%)
$10M to less than $50M	512	$80,095	446 (87%)	53 (10%)	13 (3%)	10 (2%)	3 (1%)	0 (0%)

Exhibit 19—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541512

NAICS 541512, Computer Systems Design Services								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	165	$50,563	7 (4%)	19 (12%)	139 (84%)	23 (14%)	35 (21%)	81 (49%)
$1M to less than $5M	184	$59,240	61 (33%)	78 (42%)	45 (24%)	20 (11%)	17 (9%)	8 (4%)
$5M to less than $10M	80	$47,885	67 (84%)	9 (11%)	4 (5%)	3 (4%)	0 (0%)	1 (1%)
$10M to less than $50M	88	$38,912	86 (98%)	1 (1%)	1 (1%)	1 (1%)	0 (0%)	0 (0%)

Exhibit 20—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541519

NAICS 541519, Other Computer Related Services								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	94	$52,379	6 (6%)	9 (10%)	79 (84%)	14 (15%)	16 (17%)	49 (52%)
$1M to less than $5M	100	$57,634	36 (36%)	40 (40%)	24 (24%)	10 (10%)	3 (3%)	11 (11%)
$5M to less than $10M	34	$61,824	24 (71%)	8 (24%)	2 (6%)	1 (3%)	1 (3%)	0 (0%)
$10M to less than $50M	60	$72,652	55 (92%)	4 (7%)	1 (2%)	0 (0%)	1 (2%)	0 (0%)

Exhibit 21—Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541714

NAICS 541714, Research and Development in Bio-technology (except Nanobiotechnology)								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	29	$14,063	8 (28%)	7 (24%)	14 (48%)	5 (17%)	3 (10%)	6 (21%)
$1M to less than $5M	30	$16,190	21 (70%)	9 (30%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$5M to less than $10M	25	$20,583	25 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$10M to less than $50M	41	$29,852	41 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$40M to less than $100M	16	$26,027	16 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$100M or more	36	$27,316	36 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

Exhibit 23—Cost Impacts as a Proportion of Total Revenue for Small Entities under Other NAICS

Other NAICS								
Revenue Size	**Total Number of Employers**	**Average Cost Impact per Employer**	**<1%**	**1% - <3%**	**>3%**	**3% - <5%**	**5% - 10%**	**>10%**
Less than $1M	1387	$24,919	148 (11%)	354 (26%)	885 (64%)	272 (20%)	267 (19%)	346 (25%)
$1M to less than $5M	2123	$23,956	1330 (63%)	665 (31%)	128 (6%)	66 (3%)	33 (2%)	29 (1%)
$5M to less than $10M	930	$22,313	888 (95%)	36 (4%)	6 (1%)	3 (0%)	3 (0%)	0 (0%)
$10M to less than $50M	1643	$23,738	1628 (99%)	12 (1%)	3 (0%)	2 (0%)	0 (0%)	1 (0%)
$40M to less than $100M	335	$21,532	335 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
$100M or more	786	$30,244	786 (100%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)

6. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the NPRM

When creating the H-1B, H-1B1, and E-3 temporary nonimmigrant and permanent immigrant visa classifications, Congress charged the Department with, among

other things, a unique responsibility to regulate the employment of nonimmigrant and immigrant alien workers to guard against adverse impact on the wages of workers in the United States similarly employed. Thus, the applicable statutes delegate broad discretion to the Department in determining the sources and methods that best allows it to meet this unique statutory mandate, which this NPRM proposes through revisions to the computation of prevailing wage levels applicable only to employers seeking temporary labor condition application under the H-1B, H-1B1, and E-3 visa classifications and permanent labor certification for skilled and unskilled immigrant employment in the United States. The Department recognizes that the recently published DHS H-1B rule[250] also governs alien workers employed by small businesses, and that there is overlap between these rules. However, there is no conflict between the standards proposed in this NPRM and other Federal rules; rather, each rule addresses distinct aspects of the foreign labor certification and visa process within its respective statutory and regulatory authority.

7. Alternative to the Proposed Rule

In developing this NPRM, the Department considered several alternative approaches to revising the prevailing wage level methodology for the H-1B, H-1B1, E-3, and PERM programs. Each alternative was evaluated for its consistency with the Department's statutory obligations under the INA, its responsiveness to the policy direction set forth in the Presidential Proclamation issued on September 19, 2025, and its administrative feasibility and legal defensibility. Ultimately, the Department determined that the approach adopted in this NPRM—setting wage levels at the 34th, 52nd, 70th, and 88th percentiles—strikes the most appropriate balance between strengthening wage protections and minimizing disruption. However, the Department considered and

[250] Department of Homeland Security. (2025, December 29). Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H–1B Petitions. 90 FR 60864. [CIS No. 2847-26; DHS Docket No. USCIS-2025-0040].

declined to adopt the following two alternatives.

First, the Department considered removing the option for employers to use private wage surveys and requiring all prevailing wage determinations to rely solely on the Bureau of Labor Statistics' Occupational Employment and Wage Statistics (OEWS) survey. This alternative would create a single streamlined source for prevailing wages, reducing administrative complexity and compliance costs—particularly for small businesses—by eliminating expenses associated with commissioning, validating, and submitting private surveys. While private surveys were originally permitted to provide flexibility where government data lacked granularity, OEWS now offers comprehensive coverage, making that justification less compelling. Continuing to allow private surveys introduces unnecessary complexity and disproportionate costs for small entities. By standardizing wage determinations through OEWS, this alternative would minimize economic burden compared to the NPRM, which retains multiple permissible wage sources. Cost savings would primarily result from avoided survey procurement and legal review fees, which can range from hundreds to thousands of dollars per application. However, the Department ultimately rejected this alternative because it would remove employer flexibility in rare cases where OEWS data may not fully capture specialized labor markets.

Second, the Department considered replacing area-specific prevailing wages with a national wage standard for each occupational classification. This alternative was prompted by the structural shift toward remote and hybrid work arrangements, particularly in high-skill sectors where geographic location is increasingly decoupled from labor market dynamics. A national wage standard could simplify compliance, reduce administrative burdens, and better reflect the realities of a nationalized labor market. However, this approach relies on key assumptions and introduces uncertainties that warrant discussion. For example, it assumes that remote work will continue to

expand at current rates and that geographic wage differentials will diminish over time. It also assumes that employers in lower-cost regions could absorb higher wage requirements without significant reductions in hiring or shifts in business models. These assumptions are subject to uncertainty given potential changes in remote work trends, employer practices, and statutory interpretations. The Department declined to adopt this approach due to the statutory requirement that prevailing wages be based on the "area of intended employment," as well as the need for further stakeholder engagement and legal analysis. The Department may revisit this alternative in future rulemakings as remote work trends continue to evolve.

Third, in response to concerns about the economic impact of the proposed rule on small businesses and non-profits, the Department considered an alternative that would delay implementation of the new prevailing wage requirements for these entities by two years, allowing them to spread the additional costs of recruiting and retaining H-1B workers—including higher prevailing wage standards and increased USCIS application fees—over a longer period. However, the Department chose not to pursue this approach because the revised wage standards apply only to new Labor Condition Applications (LCAs) and PERM applications, not to renewals or existing certifications, thereby limiting the impact to new hires going forward. Moreover, delaying implementation for small entities would allow new hires at these organizations to persist under a prevailing wage methodology that has been shown to set wage standards too low, potentially resulting in some workers being underpaid simply because they work for small businesses or non-profits. The Department is committed to ensuring that all workers, regardless of employer size, are paid wages that reflect statutory requirements and labor market realities, and therefore determined that a delayed implementation for small entities would not be consistent with its statutory mandate to protect U.S. workers and ensure fair wage standards across all employers.

The Department welcomes commenter feedback on these regulatory alternatives and invites suggestions for any other regulatory alternatives that commenters believe would be feasible and appropriate.

D. Review Under the Paperwork Reduction Act

The purpose of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq., includes minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA and it displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person would be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The Department has determined that the changes proposed in this NPRM to the computation of the prevailing wage levels, which are based on existing data collected

under the OEWS survey by the Bureau of Labor Statistics, do not require a collection of information subject to approval by OMB under the PRA, or affect any existing collections of information. Thus, the Department is not seeking changes to the information collections covered under the Application for Prevailing Wage Determination, OMB Control Number 1205-0508, Labor Condition Application for Nonimmigrant Workers, OMB Control Number 1205-0310, or Application for Permanent Employment Certification, OMB Control Number 1205-0451, which would not require soliciting public comments in order to seek OMB approval of any clarifying changes and de minimis adjustment to the burden that the proposed changes might cause to existing information collection tools covered under these control numbers.

E. Review Under Executive Order 13132

E.O. 13132, *Federalism*, 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The E.O. requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.

The Department has examined this NPRM and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

The Department has reviewed this NPRM in accordance with E.O. 13175 and has determined that it does not have tribal implications. This proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and tribal governments.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform," imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law, this NPRM meets the relevant standards of E.O. 12988.

H. Review Under the Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4, codified at 2 U.S.C. 1501 *et seq.*) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on state, local, and tribal governments. UMRA requires Federal agencies to assess a regulation's effects on state, local, and tribal governments, as well as on the private sector, except to the extent the regulation incorporates requirements specifically set forth in law. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any regulation that includes any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by state, local, and tribal governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or upon the private sector, except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

The Department examined this proposed NPRM according to UMRA and its statement of policy and determined that this rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by state, local, and tribal governments, in the aggregate. However, due to effects on the (or by the) private sector, the analytical requirements of UMRA apply; for relevant analysis, please see section III.A, above.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights*, 53 FR 8859 (Mar. 18, 1988), the Department has determined that this NPRM would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This NPRM would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). The Department has reviewed this NPRM under the OMB guidelines and has concluded that it is consistent with applicable policies in those guidelines.

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Alien workers, Australia, Chile, Employment, Employment and training, Enforcement, Immigration, Singapore, Temporary labor, Unemployment, Wages, Working conditions.

20 CFR Part 656

Administrative practice and procedure, Alien workers, Employment, Employment and training, Enforcement, Immigration, Permanent labor, Unemployment, Wages, Working conditions.

Department of Labor.

For the reasons stated in the preamble, the DOL proposes to amend parts 655 and 656 of Chapter V, Title 20, Code of Federal Regulations, as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

1. The authority citation for part 655 will be revised to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), (p), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101-238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101-649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; sec. 412(e), Pub. L. 105-277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107-296, 116 Stat. 2135, as amended; Pub. L. 109-423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115-218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103-206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), (p), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102-232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105-277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114-74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106-95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109-423, 120 Stat. 2900; and 8 CFR 214.2(h).

2. Amend § 655.731 by proposing revisions to paragraphs (a)(2)(ii), (a)(2)(ii)(A), and (a)(2)(ii)(A)(2) to read as follows:

§ 655.731 What is the first LCA requirement, regarding wages?

* * * * *

(a) * * *

(2) * * *

(ii) If the job opportunity is not covered by paragraph (a)(2)(i) of this section, the prevailing wage shall be based on the wages of workers similarly employed as determined by the wage component of the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics Survey (OEWS) in accordance with 20 CFR 656.40(b)(2)(i); a current wage as determined in the area under the Davis–Bacon Act, as amended, 40 U.S.C. 3141 et seq. (see 29 CFR part 1), or the McNamara–O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 6701 et seq. (see 29 CFR part 4); an independent authoritative source in accordance with paragraph (a)(2)(ii)(B) of this section; or another legitimate source of wage data in accordance with paragraph (a)(2)(ii)(C) of this section. If an employer uses an independent authoritative source or other legitimate source of wage data, the prevailing wage shall be the arithmetic mean of the wages of workers similarly employed, except that the prevailing wage shall be the median when provided by paragraphs (a)(2)(ii)(A), (b)(3)(iii)(B)(2), and (b)(3)(iii)(C)(2) of this section. The prevailing wage rate shall be based on the best information available. The following prevailing wage sources may be used:

(A) *OFLC National Processing Center (NPC) determination.* The NPC shall receive and process prevailing wage determination requests in accordance with these regulations and Department guidance. Upon receipt of a written request for a PWD, the NPC will determine whether the occupation is covered by a collective bargaining agreement which was negotiated at arm's length, and, if not, determine the wages of

workers similarly employed using the wage component of the BLS OEWS and selecting an appropriate wage level in accordance with 20 CFR 656.40(b)(2)(i), unless the employer provides an acceptable survey. The NPC shall determine the wage in accordance with secs. 212(n), 212(p), and 212(t) of the INA and in a manner consistent with 20 CFR 656.40(b)(2). If an acceptable employer-provided wage survey provides an arithmetic mean then that wage shall be the prevailing wage; if an acceptable employer-provided wage survey provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity. In making a PWD, the NPC will follow 20 CFR 656.40 and other administrative guidelines or regulations issued by ETA. The NPC shall specify the validity period of the PWD, which in no event shall be for less than 90 days or more than 1 year from the date of the determination.

(1) * * *

(2) If the employer is unable to wait for the NPC to produce the requested prevailing wage for the occupation in question, or for the CO and/or the BALCA to issue a decision, the employer may rely on other legitimate sources of available wage information as set forth in paragraphs (a)(2)(ii)(B) and (C) of this section. If the employer later discovers, upon receipt of the PWD from the NPC, that the information relied upon produced a wage below the final PWD and the employer was not paying the NPC-determined wage, no wage violation will be found if the employer retroactively compensates the H-1B nonimmigrant(s) for the difference between the wage paid and the prevailing wage, within 30 days of the employer's receipt of the PWD.

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PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

3. The authority citation for part 656 will be revised to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p); sec.122, Pub. L. 101-649, 109 Stat. 4978; and Title IV, Pub. L. 105-277, 112 Stat. 2681.

4. Amend § 656.40 by proposing revisions to paragraphs (a), (b)(2), and (b)(3), and by adding paragraphs (b)(2)(i), (b)(2)(i)(A), (b)(2)(i)(B), (b)(2)(i)(C), (b)(2)(i)(D), and (b)(2)(ii) to read as follows:

§ 656.40 Determination of prevailing wage for labor certification purposes.

* * * * *

(a) *Application process.* The employer must request a PWD from the NPC, on a form or in a manner prescribed by OFLC. The NPC shall receive and process prevailing wage determination requests in accordance with these regulations and Department guidance. The NPC would provide the employer with an appropriate prevailing wage rate. The NPC shall determine the wage in accordance with sec. 212(p) of the INA. Unless the employer chooses to appeal the center's PWD under §656.41(a) of this part, it files the Application for Permanent Employment Certification either electronically or by mail with the NPC and maintains the PWD in its files. The determination shall be submitted to the CO, if requested.

(b) * * *

(2) If the job opportunity is not covered by a CBA, the prevailing wage for labor certification purposes shall be based on the wages of workers similarly employed using the wage component of the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics Survey (OEWS) in accordance with subparagraph (b)(2)(i), unless the employer provides an acceptable survey under paragraphs (b)(3) and (g) of this section or elects to utilize a wage permitted under paragraph (b)(4) of this section.

(i) The BLS shall provide the OFLC Administrator with the OEWS wage data by occupational classification and geographic area, which is computed and assigned at levels set commensurate with the education, experience, and level of supervision of similarly

employed workers, as determined by the Department. Based on this requirement, the prevailing wage shall be provided by the OFLC Administrator at four levels:

(A) The Level I Wage shall be computed as the thirty-fourth percentile of the OEWS wage distribution and assigned for the most specific occupation and geographic area available.

(B) The Level II Wage shall be determined by first dividing the difference between Levels I and IV by three and then adding the quotient to the computed value for Level I and assigned for the most specific occupation and geographic area available.

(C) The Level III Wage shall be determined by first dividing the difference between Levels I and IV by three and then subtracting the quotient from the computed value for Level IV and assigned for the most specific occupation and geographic area available.

(D) The Level IV Wage shall be computed as the eighty-eighth percentile of the OEWS wage distribution and assigned for the most specific occupation and geographic area available. Where the Level IV Wage cannot be computed due to wage values exceeding the uppermost interval of the OEWS wage interval methodology, the OFLC Administrator shall determine the Level IV Wage using the current hourly wage rate applicable to the highest OEWS wage interval for the specific occupation and geographic area, or the arithmetic mean of the wages of all workers for the most specific occupation and geographic area available, whichever is highest.

(ii) The OFLC Administrator will publish, at least once in each calendar year, on a date to be determined by the OFLC Administrator, the prevailing wage levels under paragraph (b)(2)(i) of this section as a notice posted on the OFLC website.

(3) If the employer provides a survey acceptable under paragraph (g) of this section, the prevailing wage for labor certification purposes shall be the arithmetic mean of the wages of workers similarly employed in the area of intended employment. If an

otherwise acceptable survey provides a median and does not provide an arithmetic mean, the prevailing wage applicable to the employer's job opportunity shall be the median of the wages of workers similarly employed in the area of intended employment.

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Susan Frazier,
Principal Deputy Assistant Secretary for Employment and Training, Labor.

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