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May 25, 2026

ETA.OFLC.Forms@dol.gov
Mr. 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

Submitted via www.regulations.gov

Re: **DOL Docket No. ETA–2026–0001 Regulatory Information Number (RIN 1205–AC30)**
OMB Control Number – 1205-0508
Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States

Dear Mr. Pasternak:

I am submitting this comment in response to Department of Labor (DOL) Employment and Training Administration's (ETA) March 24, 2026, solicitation of comments concerning the Proposed Rule entitled, "Application for Prevailing Wage Determination contained in 91 *Fed. Reg.* 14042. This Proposed Rule would change the DOL Office of Foreign Labor Certification's (OFLC) prevailing wage methodology for the H-1B, H-1B1 and E-3 nonimmigrant processes and the Program Electronic Review Management (PERM) process.

As background, I serve as Co-Chair of the Immigration Practice Group for the firm and have practiced business immigration law for over forty years. I am board certified in immigration and nationality law by the Texas Board of Legal Specialization and a former national president and general counsel to American Immigration Lawyers Association (AILA). Please refer to my bio at the following link: https://www.dickinson-wright.com/our-people/kathleen-c-walker?tab=0 . Our immigration practice group represents a broad variety of industry sectors including healthcare, energy, manufacturing, education, maritime, technology, transportation, engineering, hospitality, agriculture, automotive, mining, artificial intelligence, research, and food production, among others.

Background
Employers must pay H-1B, H-1B1, and E-3 nonimmigrants as well as PERM based immigrant employees the “required wage,” which is defined as 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.”[1] The Proposed Rule’s revisions to the existing Occupational Employment and Wage Statistics (OEWS) four-tier wage level system would increase the prevailing wage levels significantly:

Levels	Existing Wage Level Percentiles	Proposed Rule – Wage Level Percentiles Effective Increase
Level I - entry	17th	34th - 100% increase
Level !! – qualified	34th	52nd – 52.9% increase
Level III - experienced	50th	70th - 40% increase
Level IV – fully competent	67th	88th- 31.3% increase

Employers have relied on the exiting wage methodology since 2005. Raising these base wage levels to the 34th, 52nd, 70th, and 88th percentiles would materially increase labor costs for employers after reliance on the existing wage methodology over a period of more than 20 years. The Proposed Rule applies across-the-board adjustments that lack any occupational nexus. Due to the lack of any explanation, the Proposed Rule exemplifies random, poorly justified resolutions that courts have condemned as arbitrary and capricious in the past.[2] In point of fact, the Proposed Rule does not explain how the proposed increased wage levels reflect differences in education, experience, and supervision for each occupation.

The Proposed Rule also fails to provide any systematic data analysis to prove its assertion that foreign workers are routinely paid less than comparable U.S. workers. In addition, there is no credible evidence or information provided to support the Proposed Rule’s assertion that the current wage assessments have resulted in uniform wage suppression or displacement of United States workers in most occupations and sections subject to the wage rule. The DOL fails to recognize that 20 CFR 655, Subpart A already mandates employers to pay the higher of:

1. the prevailing wage for the occupational classification in the area of intended employment, or
2. the actual wage paid by the employer to other individuals with similar experience and qualifications for the specific employment in question.

This regulation prevents the underpayment of foreign workers and ensures that employers may not lawfully use the H-1B nonimmigrant category, for example, to employ foreign workers as a cheaper substitute for United States workers. The Proposed Rule does not explain how pervasive underpayment of wages occurs, if these existing protections are properly applied and

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[1] 8 USC §1182(n)(1)(A)(i)(I) -(II); *see also* 20 CFR §655.731(a).
[2] *Motor Veh. Mfrs. Ass'n of the U.S. v. State Farm Mutual Auto Ins. Co*. (State Farm), 463 U.S. 29, 43 (1983) “[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” (quoting *Burlington Truck Lines, Inc. v. U.S.*, 371 U.S. 156, 168 (1962).

enforced by the DOL. A more efficient use of resources would be in funding additional oversight and submission of data reports by employers to document wage compliance. For that matter, involving the states as an optional avenue for wage establishment and compliance with terms of employment in the nonimmigrant and immigrant categories implicated could improve the accuracy of wages and address local labor needs with more current data.

In the Proposed Rule, the DOL references its 2009 Guidance regarding prevailing wage levels. For 17 years, prevailing wages have been calculated based on the step-by-step process outlined in this Guidance. This 2009 Guidance stated that wage "determinations using a government survey shall be made available for each occupation at 4 levels of wages commensurate with experience, education, and the level of supervision." The current prevailing wage determination process, however, predates major changes in labor markets and occupational structures and categories. Thus, even if the DOL does not finalize the Proposed Rule, it should modernize and improve the method by which prevailing wages are calculated if accuracy is a goal. In addition, any changes should involve a graduated phased in approach to address potential legitimate labor shortages and the impact of detrimental reliance on existing processes by employers.

Please refer to the additional detailed analysis and examples provided in the comment on this Proposed Rule by AILA and the American Immigration Council dated May 21, 2026. Thank you in advance for your consideration.

Sincerely,

Dickinson Wright PLLC

By: ___________________________________
Kathleen Campbell Walker, Member

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