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U.S. Department of Labor
200 Constitution Avenue NW, Room N-5311
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Submitted via www.regulations.gov

Re: OMB control number 1205-0508.
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

Dear Mr. Pasternak:

I submit these comments in response to the Department of Labor's ("Department" or "DOL") notice of proposed rulemaking published in the Federal Register on March 27, 2026 (the "Proposed Rule"), which would revise the prevailing wage methodology used by the Office of Foreign Labor Certification ("OFLC") in the H-1B, H-1B1, and E-3 nonimmigrant programs and in the Program Electronic Review Management ("PERM") process.[1]

I am an immigration attorney whose practice centers on employment-based immigration. My clients include public and private colleges and universities, academic medical centers and teaching hospitals, non-profit research institutes and charitable organizations, public school systems, and a wide range of private companies—many of them small businesses. Across these sectors, my clients depend on the H-1B, H-1B1, E-3, and PERM programs to recruit and retain the skilled professionals their missions and operations require. I write to convey, from that vantage point, the serious and concrete economic harm the Proposed Rule would inflict on these employers, on the United States and foreign workers they employ, and on the students, patients, and communities they serve.

In short, the Proposed Rule would raise the four prevailing wage levels from approximately the 17th, 34th, 50th, and 67th percentiles of the Occupational Employment and Wage Statistics ("OEWS") wage

[1] Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States, 91 FR 15454 (Mar. 27, 2026).

distribution to the 34th, 52nd, 70th, and 88th percentiles, respectively. It would do so on the basis of a thin and outdated evidentiary record, in disregard of more than two decades of reliance, without any reasoned assessment of the rule's effects on the institutions that drive American research, education, public health, and small-business innovation, and without acknowledging that the asserted problem is already addressed by existing law. For the reasons set out below, I respectfully urge the Department to withdraw the Proposed Rule. Should the Department nonetheless proceed, it must, at a minimum, correct the methodological defects identified herein and provide a meaningful phased transition.

I. The Current Four-Tier Wage Structure Has Served Workers and Employers Well for More Than Two Decades.

The four-tier prevailing wage structure now in effect was adopted in 2005 to implement the H-1B Visa Reform Act of 2004, which amended INA § 212(p) to require at least four wage levels "commensurate with experience, education, and the level of supervision." The Department's 2005 guidance[2] replaced the prior two-level system with Levels I (entry), II (qualified), III (experienced), and IV (fully competent), set at roughly the 17th, 34th, 50th, and 67th percentiles of the OEWS distribution. The 2009 guidance[3] has governed OFLC prevailing wage determinations for the PERM, H-1B, H-1B1, and E-3 programs ever since, without altering those percentiles.

The Department attempted to abandon this structure once before. Its 2020 interim final rule would have raised the levels to roughly the 45th, 62nd, 78th, and 95th percentiles;[4] it was set aside in multiple lawsuits for failure to observe notice-and-comment requirements.[5] A January 2021 final rule recalibrated Levels I and IV to the 35th and 90th percentiles,[6] but was repeatedly delayed and ultimately vacated, after which the Department resumed using the long-standing methodology.[7] Now, four years later, the Department again declares that the methodology it has applied for some twenty years is "inaccurate" and seeks to raise the levels to the 34th, 52nd, 70th, and 88th percentiles. The history matters: stakeholders have built their institutions around this system, and the Department has twice failed to displace it.

II. The Proposed Rule Disregards Profound Reliance Interests.

Employers must pay H-1B, H-1B1, E-3, and PERM employees the higher of the actual wage or the prevailing wage for the occupation in the area of employment.[8] For more than twenty years, my clients have built multi-year staffing plans, grant budgets, faculty and clinical compensation scales, and long-

[2] ETA Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (May 2005).

[3] Employment and Training Administration, Prevailing Wage Determination Policy Guidance for Nonagricultural Immigration Programs (Revised Nov. 2009).

[4] Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 85 FR 63872 (Oct. 8, 2020).

[5] See Chamber of Commerce of the U.S. v. U.S. Dep't of Homeland Sec., 504 F. Supp. 3d 1077 (N.D. Cal. 2020); Purdue Univ. v. Scalia, 2020 WL 7340156 (D.D.C. Dec. 14, 2020); ITServe All., Inc. v. Scalia, 2020 WL 7074391 (D.N.J. Dec. 3, 2020).

[6] Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 86 FR 3608 (Jan. 14, 2021).

[7] 86 FR 70729 (Dec. 13, 2021); see also Chamber of Commerce v. Dep't of Homeland Sec., No. 20-cv-07331 (N.D. Cal. June 23, 2021).

[8] 8 U.S.C. § 1182(n)(1)(A)(i)(I)-(II); see also 20 C.F.R. § 655.731(a).

term immigration strategies around prevailing wage floors corresponding to the 17th, 34th, 50th, and 67th percentiles. Abruptly raising those floors to the 34th, 52nd, 70th, and 88th percentiles would materially increase labor costs for employers that organized their compensation systems in reliance on the Department's settled policy. When an agency changes a longstanding position, it must take account of the "serious reliance interests" its prior policy engendered. The Proposed Rule does not.

The reliance harm is acute in the very sectors my clients occupy. Educational services institutions alone filed more than 45,530 labor condition applications in FY 2025.[9] In litigation over the materially identical 2020 rule, the American Council on Education and twenty-three other higher-education organizations documented the damage such increases would cause:[10] university-affiliated medical centers would be unable to recruit and retain physicians and specialists who serve rural and underserved communities; multi-year, recipient-specific research grants would be stranded when their budgets could no longer cover the mandated wages; and smaller liberal-arts colleges, which prioritize affordability, simply could not absorb expenditures of this magnitude. Those harms apply with full force here.

These pressures do not stop at the foreign worker. Because federal and state equal-pay laws, collective bargaining structures, and basic norms of pay equity require comparable compensation for comparably situated employees, an artificial increase in the wage floor for a sponsored worker cascades into raises for entire cohorts of United States faculty, clinicians, researchers, and staff. For a university, hospital, non-profit, or school district operating on a fixed appropriation, grant, or tuition base, the result is not higher pay across the board but fewer positions, frozen hiring, shuttered programs, and curtailed services. An increase that prices skilled professionals out of these institutions advances neither the interests of United States workers nor the statutory purpose.

Foreign workers and their families have relied just as heavily. They have accepted positions, purchased homes, enrolled children in local schools, and sequenced PERM recruitment and Form 9089 filings around prevailing wage determinations issued under the existing framework, on the reasonable expectation that any change would be gradual and clearly signaled. The H-1B program alone supports more than 580,000 workers across technology, manufacturing, finance, healthcare, education, and research.[11] In FY 2024 the Department certified 502,374 H-1B applications,[12] yet the Department's own preamble estimates only a $3.53 million annualized and $24.59 million ten-year cost[13]—figures that cannot be reconciled with the sweeping wage increases the rule would impose and that confirm the reliance interests at stake were never seriously weighed.

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[9] See 2026 Active Hiring by NAICS Industry (H-1B LCA), available at https://www.myvisajobs.com/reports/h1b/industry/ (educational services institutions filed more than 45,530 LCAs in FY 2025).

[10] See Brief for the American Council on Education and 23 Other Higher Education Organizations as Amici Curiae in Support of Plaintiff's Motion for Preliminary Injunction, Purdue Univ. v. Scalia, 2020 WL 7340156 (D.D.C. Dec. 14, 2020).

[11] U.S. Citizenship & Immigration Services, H-1B Authorized-to-Work Population Estimate (Sept. 30, 2019).

[12] 91 FR at 15455 (the Department certified 502,374 H-1B applications in FY 2024).

[13] 91 FR at 15480 (estimating an annualized cost of $3.53 million and a total ten-year cost of $24.59 million at a 7 percent discount rate, in 2024 dollars).

III. The Proposed Rule Is Arbitrary and Capricious.

a. The Department Has Not Shown That Foreign Workers Are Systematically Underpaid.

A central premise of the Proposed Rule is that H-1B and other foreign workers are routinely paid less than comparable United States workers, giving employers an incentive to substitute cheaper foreign labor. The rule offers generalized concerns and selective studies, but no systematic data comparing wages paid to foreign workers with those paid to similarly situated United States workers—matched by occupation, geography, experience, employer type, and duties. It does not disaggregate by sector. Alleged abuses by a narrow subset of IT staffing firms are treated as representative of the entire H-1B labor market, including the universities, teaching hospitals, non-profit research institutes, and cap-exempt employers that make up much of my practice and that operate under wholly different compensation structures. An agency must "examine the relevant data and articulate a satisfactory explanation for its action."[14] Reliance on anecdote and narrow studies to justify a wholesale methodological overhaul is the opposite of reasoned decisionmaking.

b. The Rule Cannot Be Reconciled with the Existing "Higher Of" Requirement.

Existing regulations already require employers to pay the higher of the prevailing wage or the actual wage paid to other employees with similar experience and qualifications. That dual requirement is designed precisely to prevent foreign workers from being used as a cheaper substitute for United States workers. If an employer pays its United States workers wage X, it must pay the foreign worker at least X, regardless of the prevailing wage; if the prevailing wage is higher, the employer must meet it. The Department never explains how pervasive underpayment could occur if these protections are enforced. If the concern is evasion by particular bad actors, the rational response is targeted enforcement, audits, and focused adjustments—not an across-the-board increase that punishes the law-abiding institutions that make up the overwhelming majority of program users.

c. The Rule Relies on Outdated Evidence and Ignores Recent Reforms.

The studies on which the Department leans predate significant reforms that have already changed employer incentives. The beneficiary-centric H-1B registration rule[15] and the subsequent weighted, wage-based selection process[16] reduce the advantage of multiple registrations and reward higher offered wages, directly advancing the wage-protection objectives the Department invokes. The Department has also announced Secretary-certified LCA investigations to police compliance.[17] By relying on historical critiques tied to the prior system while ignoring these intervening reforms, the Department has failed to consider "an important aspect of the problem," rendering the rule arbitrary and capricious.[18]

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[14] Motor Vehicle Mfrs. Ass'n of the U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

[15] 89 FR 7456 (Feb. 2, 2024) (beneficiary-centric selection).

[16] 90 FR 60864 (Dec. 29, 2025) (weighted, wage-based selection).

[17] See U.S. Department of Labor, "Department of Labor Launches Project Firewall to Protect America's Highly Skilled Workforce," announcing Secretary-certified LCA investigations.

[18] 5 U.S.C. § 706(2)(A).

IV. The Wage-Level Assignments Are Inconsistent with the Department's Own Prior Rules and Record.

The Department's 2020 IFR and 2021 final rule were aimed at the same programs and the same goal, and the Department solicited extensive public input through a 2021 Request for Information on how specific occupations map to OEWS data and how education, experience, and supervision should be reflected in each level. Those rules adopted percentiles of 45/62/78/95 and then 35/53/72/90, respectively, and even then included transition periods. The current rule proposes yet another set—34/52/70/88—without transparently explaining why the same or similar occupations now warrant materially different levels, and without explaining how the chosen percentiles reflect occupational differences in education, experience, and supervision rather than an across-the-board adjustment. These shifting numbers, untethered to any change in occupational content, reflect policy preference rather than a stable, evidence-based methodology—precisely the kind of unexplained inconsistency that 5 U.S.C. § 706(2)(A) forbids.[19]

a. The Rule Fails to Assess Discrimination and Displacement Effects on United States Workers.

The Proposed Rule emphasizes a hypothesized benefit to United States workers while ignoring foreseeable harms to them. First, by imposing sharply higher wage floors only where a foreign worker fills the role, the rule creates a powerful economic incentive to avoid hiring or sponsoring foreign-born candidates—including students, postdocs, and trainees already in the United States—thereby increasing the risk of de facto discrimination the statute forbids. Second, in the budget-constrained settings where my clients operate, the assumption that higher foreign-worker wages will lift United States wages is unrealistic; the more likely result is eliminated positions, redirected funds, and shrunken training pipelines—postdoctoral fellowships, residencies, and junior research and teaching roles—that feed the domestic workforce. Third, sharply higher entry wages for new foreign hires compress or freeze incumbent United States employees' pay, or force employers to cancel planned positions and outsource work. The Department offers no quantitative analysis of any of these effects.

V. If the Department Proceeds, It Must Revise Its Methodology for Levels I and IV.

Since 1997 the Department has set the entry-level (Level I) wage at the 17th percentile.[20] The Bureau of Labor Statistics—the Department's own principal labor-economics agency—identifies the 10th to 25th percentile as the appropriate range for entry-level wages.[21] The proposal to set Level I at the 34th percentile is inconsistent with that standard and with historical practice. When Congress amended the wage provisions in 1998, it was aware of the percentiles DOL used and left them undisturbed,[22] and subsequent bills to raise the floor have repeatedly failed to pass.[23]

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[19] 5 U.S.C. § 706(2)(A); see also State Farm, 463 U.S. at 43 (an agency must articulate "a rational connection between the facts found and the choice made").

[20] Prevailing Wage Policy for Nonagricultural Immigration Programs, General Administration Letter No. 2-98 (Oct. 31, 1997).

[21] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, https://www.bls.gov/oes/earnings.htm; see also Beyond Averages: Other Ways to Look at Occupational Wages, BLS Occupational Outlook Quarterly (Winter 2007-2008) (the 10th percentile is sometimes used as an estimate of starting salaries).

[22] American Competitiveness and Workforce Improvement Act of 1998, Title IV of Pub. L. No. 105-277.

[23] Prevailing Wage Requirements for the H-1B, H-1B1, and E-3 Workers in Specialty Occupations, Cong. Research Serv. (Jan. 30, 2025).

The Department's justification is internally inconsistent. Having previously called the methodology "outmoded,"[24] and then retreated from the 45th to the 35th percentile for Level I to "account for small businesses and rural employers,"[25] the Department now proposes the 34th percentile without explaining why it is more correct than the 35th it abandoned, or why Level I should exceed the 25th-percentile ceiling BLS identifies for entry-level work.

The Department's premise is also self-defeating. It argues that wages must rise because employers pay more than the prevailing wage,[26] pointing to its calculation that the average actual wage ($121,908) exceeds the average prevailing wage ($111,717) for FY 2020-2025. But that gap shows the system working: an employer may not even file an LCA unless it will pay at least the prevailing wage, so every actual wage is necessarily at or above the prevailing wage. Congress created separate "actual wage" and "prevailing wage" obligations precisely because it understood the two would differ.[27] Treating that lawful, statutorily anticipated difference as proof of failure is irrational. The Department further invokes recent-graduate unemployment rates and layoffs[28]—but prevailing wage percentiles have never been dynamic, and the Department offers no parameters for adjusting them as those conditions change. Enforcement of program terms belongs to the Wage and Hour Division's existing tools, not to an inflated percentile.[29]

The Department's reliance on the Occupational Outlook Handbook to suggest that software developers do not require a bachelor's degree misreads its own sources. The Ninth Circuit has rejected exactly that distortion of the word "typically."[30] Since 2009 the Department has relied on O*NET, not the Handbook, for prevailing wage purposes;[31] and O*NET confirms that essentially all software developer positions require at least a bachelor's degree.[32] The same is true of occupational therapists, where O*NET requires a bachelor's or (for a supermajority) a master's degree.[33] Together these two occupations account for roughly forty percent of recent LCAs.[34] Because nearly all of those positions plainly require degreed, H-1B-caliber workers, the Department's rationale—that the existing percentile improperly includes the "least educated and experienced" workers—does not hold, and a one-size-fits-all increase is arbitrary. A

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[24] 85 FR 63888 (Oct. 8, 2020).

[25] 86 FR at 3618, 3639-40 (lowering Level I to the 35th percentile and citing the need to account for small businesses and rural employers).

[26] 91 FR at 15470-71. The Department itself calculated an average prevailing wage of $111,717 and an average actual wage of $121,908 paid to the same beneficiaries for FY 2020-2025.

[27] See INA § 212(n); 8 U.S.C. § 1182(n)(1)(A). Congress created separate "actual wage" and "prevailing wage" obligations precisely because it understood the two would not always be equal.

[28] 91 FR at 15473.

[29] See https://www.dol.gov/agencies/whd/immigration/h1b (Wage and Hour Division enforcement tools).

[30] Innova Sols., Inc. v. Baran, 983 F.3d 428, 432 (9th Cir. 2020).

[31] See https://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm.

[32] See O*NET OnLine, Summary Report for 15-1252.00 (Software Developers), https://www.onetonline.org/link/summary/15-1252.00.

[33] See O*NET OnLine, Summary Report for 29-1122.00 (Occupational Therapists), https://www.onetonline.org/link/summary/29-1122.00.

[34] See Office of Foreign Labor Certification, LCA Programs Selected Statistics, FY 2026 Q1, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/LCA_Selected_Statistics_FY2026_Q1.pdf.

more sophisticated approach would incorporate O*NET education data into the OEWS levels so that occupations requiring a degree are not penalized for the composition of unrelated occupations.[35]

a. The Level IV Percentile Is Not Supported by Reasoned Analysis or BLS Data.

The choice of the 88th percentile for Level IV is not derived from any observable labor-market segmentation. The Department selects a "Benchmark Value"—an aggregate average of OEWS wages—and then back-solves the percentiles to reproduce that target, allowing the statutory spacing formula to propagate the choice across Levels II and III.[36] This is circular: the rule treats the gap between average actual wages and prevailing wages as proof that levels are too low, defines the benchmark from the same averages, and then "validates" the new percentiles by showing they close the gap. It never demonstrates that the 88th percentile corresponds to any identifiable group of "similarly employed" workers.

Worse, OEWS percentiles do not encode experience, education, or supervision at all.[37] The typical H-1B beneficiary is early- to mid-career—the median approved beneficiary in FY 2024 was 34 years old[38]—whereas the median worker in management, professional, and related occupations is 43.5.[39] Anchoring Level IV at the 88th percentile thus benchmarks ordinary senior-level roles against a much older, more experienced subset of the workforce. Indeed, because more than half of professional O*NET occupations sit in Job Zone 4, where the 2009 Guidance assigns Level IV at just five years of experience, and because median tenure with a single employer is only 3.9 years,[40] a Level IV wage for professional occupations is far closer to the 50th percentile than to the 88th. The Department's high-end anchor is a policy choice dressed up as a measurement.

VI. Alternative Wage Surveys Must Be Preserved, Not Curtailed.

The regulations recognize multiple equally legitimate sources of prevailing wage data, and provide that, absent a collective bargaining agreement, an employer "is not required to use any specific methodology" and "may utilize any of these options."[41] The statute requires that the wage attestation rest on "the best information available" at the time of filing.[42] Private compensation surveys—such as those my corporate, hospital, and university clients license for organization-wide benchmarking—are built for the purpose of measuring what employers actually pay at defined education and experience levels, and many have been accepted by the Department for decades. By inflating the OEWS percentiles, the Proposed Rule would

[35] See O*NET, Overview, https://www.onetcenter.org/overview.html.
[36] 91 FR at 15471.
[37] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, https://www.bls.gov/oes/ (OEWS wage percentiles do not report or control for experience, education, or supervisory level).
[38] See U.S. Dep't of Homeland Security, Characteristics of H-1B Specialty Occupation Workers, Fiscal Year 2024 (median age of approved beneficiaries was 34).
[39] U.S. Bureau of Labor Statistics, Current Population Survey, Employed Persons by Detailed Occupation and Age (2024) (median age in management, professional, and related occupations of 43.5).
[40] U.S. Bureau of Labor Statistics, Employee Tenure Summary, https://www.bls.gov/news.release/tenure.nr0.htm (median tenure with current employer of 3.9 years).
[41] 20 C.F.R. § 655.731(a)(2); see also 20 C.F.R. § 656.40.
[42] INA § 212(n)(1)(A); 8 U.S.C. § 1182(n)(1)(A).

drive a wedge between the government's figures and genuine market data, defeating the rule's own stated objective of wage accuracy.

Yet the Proposed Rule signals that the Department may now confine alternative surveys to "limited circumstances."[43] That is backwards. OEWS data are frequently incomplete: the Department aggregates detailed occupations into broad ones, reports no data for many occupations, substitutes state or national figures for local ones, or defaults entire occupations to a single rate when wages are "too high to provide an estimate."[44] Rather than restricting private surveys, the Department should expand their role—and could contract directly with survey providers to ease validation. Notably, the current percentiles track reputable private survey results far more closely than the inflated percentiles would; a Level IV software developer wage in Chicago derived from a leading private survey is comparable to the current OEWS Level IV figure and well below what the Proposed Rule would produce.

VII. The Regulatory Alternatives Should Be Abandoned.

a. Experience Benchmarking.

The experience-benchmarking alternative would tie the required wage to the individual worker's estimated education and experience rather than to the occupation. That is difficult to square with a statute that ties wages to the occupation and the local labor market, and it would yield different wage obligations for identical positions depending on the chosen candidate, undermining predictability. The methodology layers Mincer earnings equations onto American Community Survey data and applies the result to OEWS percentiles—combining datasets built on different foundations (employer-reported versus self-reported household income), relying on "potential experience" estimated from age and education that ignores career interruptions common among caregivers and career-changers, and producing a synthetic figure observed in neither dataset. It would also create perverse incentives to favor less-qualified candidates to reduce cost, increase administrative burden by requiring wage determinations only after a specific candidate is identified, and raise comparison-group problems because the ACS population is not limited to United States workers as the statute defines them.

b. National Wage Standard for Remote Work.

A national wage standard would read the statutory "area of employment" requirement out of the INA.[45] Labor markets vary enormously by region; a national standard would inflate wages in lower-cost areas—including the rural communities and emerging hubs where many of my school-district, public-employer, and small-business clients operate—while distorting them in high-cost metros. Remote work has not eliminated the relevance of geography, and the Department already has tools to address remote arrangements without discarding the statutory framework.

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[43] 91 FR at 15479 (acknowledging that private surveys may, in limited circumstances, provide the most accurate reflection of market wages).

[44] Office of Foreign Labor Certification, Technical Release Notes for the OEWS Update, Wage Year 2025-26 (effective July 1, 2025).

[45] INA § 212(n)(1)(A). For H-1B workers, DOL defines the "area of intended employment" as the area within normal commuting distance of the place of employment. 20 C.F.R. § 655.715.

VIII. The Department Underestimates the Disproportionate Impact on Small Businesses and Small Non-Profits.

The Proposed Rule's small-entity analysis is inadequate under the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act.[46] The Department asserts that 13,602 unique small H-1B employers met the SBA size standards[47] but does not disclose the underlying criteria or data; given that small firms constitute 99.9% of all United States businesses,[48] the true number of affected small entities is almost certainly far higher.

The financial analysis is likewise far too low. The Department's "average wage cost per small entity" of $20,298 counts only the foreign worker's raise and ignores the cascading increases that pay-equity obligations force across the rest of the workforce. Its estimate that one hour of a human-resources professional's time ($60.94) suffices to assess the rule's impact is unrealistic; a realistic figure is at least twenty hours—roughly $1,218—per affected worker.[49] Its 3-percent-of-revenue significance threshold, borrowed from rules predating the post-2019 inflationary period, understates impact in today's environment,[50] so its conclusion that only 15 percent of small entities would be significantly affected is unreliable. And while the rule details the top ten NAICS codes—with average costs ranging from roughly $14,000 to nearly $80,000—it omits the more than 7,000 other small-business NAICS codes that sponsor workers, and treats recurring annual wage obligations as a one-time cost.[51]

Critically for my practice, the Department's analysis is silent on small non-profits. Many of my clients—community clinics, research institutes, social-service agencies, and independent schools—are small non-profit employers. USCIS already collects data identifying non-profit sponsors, having reduced their Form I-129 fee from $780 to $460 and eliminated the $600 Asylum Program Fee,[52] so the Department could readily quantify this impact but did not. The rule also ignores small businesses that file PERM applications for workers in E, L, R, or TN status who never held H-1B, H-1B1, or E-3 status. For these reasons, the small-entity analysis should be redone before any rule is finalized.

Finally, the asserted eight-year implementation horizon is illusory. Workers change employers; new employers must apply the current July 1 wage levels immediately. With total LCA approvals of 1,285,721 in FY 2024[53] against only limited annual cap numbers, large numbers of workers move between employers each year and would feel the increase at once. And because an employer must generally file the PERM-based green-card process by the end of the worker's fifth H-1B year—often beginning in year three[54]—

[46] Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121; see also Regulatory Flexibility Act, 5 U.S.C. §§ 601-612.
[47] 91 FR at 15493.
[48] Small businesses account for 99.9% of all U.S. firms. See U.S. Chamber of Commerce, The State of Small Business Now, https://www.uschamber.com/small-business/state-of-small-business-now.
[49] 91 FR at 15493-94.
[50] See U.S. Bureau of Labor Statistics, Consumer Price Index Summary, https://www.bls.gov/news.release/cpi.nr0.htm.
[51] 91 FR at 15494 & Exhibits 11-23.
[52] USCIS, Small Entity Compliance Guide for the 2024 Fee Rule (Mar. 28, 2024) (reducing the Form I-129 fee for qualifying non-profits from $780 to $460 and eliminating the $600 Asylum Program Fee).
[53] 91 FR, Exhibit 4 (listing 1,285,721 total LCA approvals for FY 2024).
[54] 8 C.F.R. § 214.2(h)(13)(ii)(D); see also AC21 §§ 104(c), 106(a)-(b).

and must attest to paying the prevailing wage at the time of PERM filing,[55] the real-world impact would arrive in months, not years.

IX. At a Minimum, Any Final Rule Must Provide a Meaningful Phased Implementation.

If the Department nonetheless concludes after more than twenty years that higher floors are required, it must mitigate the disruption. The Department's own 2021 final rule recognized this, phasing increases in over eighteen months for most positions and over three and a half years for workers on track to permanent residence,[56] in express acknowledgment that sudden increases can be "counterproductive" by triggering layoffs that harm the very workers the rule purports to protect. The current proposal would instead apply the new levels to any prevailing wage request pending on the effective date,[57] upending applications properly filed under the standard then in effect and destabilizing workers who have built lives and careers here. At a bare minimum, the Department cannot apply a new rule to cases pending when it takes effect. Any final rule should include multi-year transition periods, grandfathering for PERM applications already filed or in recruitment, and protective treatment for H-1B, H-1B1, and E-3 extensions for workers already employed under commitments made in reliance on the current methodology.

X. The Department Should Modernize Its 2009 Prevailing Wage Guidance.

Whether or not the Department finalizes this rule, it should update the 2009 Guidance, which has governed prevailing wage determinations for nearly seventeen years and predates the move from the legacy iCert system to the Foreign Labor Application Gateway. Administrative law requires that regulated parties have "ascertainable certainty" about the standards applied to them.[58] Several current adjudicatory practices fail that test:

- **Travel and relocation "points."** OFLC appears to raise the assigned wage level based on domestic travel, international travel, or relocation requirements, but this practice appears nowhere in the 2009 Guidance and is conveyed only through FAQs and informal communications, often learned only after an ETA Form 9141 is filed.[59] The Department should codify any such factors, define how frequency, duration, and scope matter, and provide worked examples.
- **Alternative requirements.** OFLC now issues two separate prevailing wage determinations when an employer lists alternative requirements, taking the higher figure without regard to how much of the role each occupation represents,[60] a method found nowhere in the regulations or 2009 Guidance. The Department should account for the actual allocation of duties.

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[55] See ETA Form 9089, Section I, Attestation No. 1; 20 C.F.R. §§ 656.40, 656.41.
[56] 86 FR 3608 (Jan. 14, 2021) (describing a two-step phase-in over eighteen months for most positions and a four-step phase-in over three-and-a-half years for workers on track to permanent residence).
[57] 91 FR at 15478 (proposing to apply the new wage levels to prevailing wage requests pending on the effective date).
[58] FCC v. Fox Television Stations, Inc., 567 U.S. 239, 253 (2012); General Electric Co. v. EPA, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (requiring "ascertainable certainty" of regulatory requirements).
[59] See Permanent Employment Certification (PERM) Online Filing Release Notes (June 1, 2023), Flag.dol.gov.
[60] U.S. Dep't of Labor, OFLC, National Prevailing Wage Center, Round 3: Implementation of the Revised ETA-9141 FAQs (July 16, 2021).

- **Combination of occupations.** Revisions to the ETA Form 9089 now force an employer that disputes a "combination of occupations" finding into a Request for Redetermination, Center Director Review, and BALCA appeal before it may explain how it satisfies a regulatory exception,[61] a needlessly burdensome process for employers and the agency alike.
- **The end of O*NET Job Zone 1.** Effective February 2026, O*NET merged Job Zones 1 and 2 into a new "Job Zone 1-2."[62] The 2009 Guidance, however, carves out Job Zone 1 for purposes of the Specific Vocational Preparation calculation that drives wage levels,[63] and the Department has not explained how the new "Job Zone 1-2" is to be used.[64] Clear instructions are needed so employers can predict compliant wages.

XI. Conclusion.

I share the Department's goal of ensuring that no employer uses these programs to undercut United States workers. But that goal is already served by the statute's "higher of" requirement, by recent lottery and selection reforms, and by the Department's own enforcement tools—and it can be advanced further through targeted, data-driven measures aimed at any genuine bad actors. Upending a system on which colleges and universities, academic medical centers, non-profits, public school systems, private companies, and small businesses have relied for more than two decades—on the strength of an outdated and one-sided record, a circular benchmark methodology, and a small-entity analysis that overlooks small non-profits and understates real costs—would harm United States and foreign workers alike and would not survive review under the Administrative Procedure Act.

I respectfully urge the Department to withdraw the Proposed Rule. If the Department proceeds, I urge it to correct the Level I and Level IV methodologies, preserve and expand the use of alternative wage surveys, abandon the experience-benchmarking and national-wage alternatives, redo its small-entity analysis, and provide a genuine, multi-year phased transition with protection for pending and in-process cases. Thank you for your consideration of these comments.

Respectfully submitted,

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[61] 20 C.F.R. § 656.17(h)(3).

[62] See O*NET, Job Zones in Transition: A New Four-Level Framework Reflecting the Increased Skill Demands of Occupations (Oct. 2025), https://www.onetcenter.org/reports/Job_Zone_Transition.html.

[63] See O*NET, Stratifying Occupational Units by Specific Vocational Preparation (SVP) (1999), https://www.onetcenter.org/dl_files/SVP.pdf.

[64] Page 8 of the 2009 Guidance.