DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2847-26; DHS Docket No. USCIS-2025-0040]

RIN 1615-AD01

Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The U.S. Department of Homeland Security (DHS) is amending its regulations governing the process by which U.S. Citizenship and Immigration Services (USCIS) selects H-1B registrations for unique beneficiaries for filing of H-1B cap-subject petitions (or H-1B petitions for any year in which the registration requirement is suspended). Through this rule, DHS is implementing a weighted selection process that will generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels, to better serve the congressional intent for the H-1B program. This rule will be effective in time for the FY 2027 registration season.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000 (not a toll-free call).

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

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Table of Abbreviations

AI – Artificial Intelligence
APA – Administrative Procedure Act
BLS – U.S. Bureau of Labor Statistics
CBA – collective bargaining agreement
CFR – Code of Federal Regulations
COVID-19 – Coronavirus Disease of 2019
CPI-U – Consumer Price Index for All Urban Consumers
CRA – Congressional Review Act
DHS – U.S. Department of Homeland Security
DOW – U.S. Department of War
DOL – U.S. Department of Labor
E.O. – Executive Order
EPA – U.S. Environmental Protection Agency
ETA – Employment and Training Administration
FDNS – Fraud Detection and National Security
FR – *Federal Register*
FY – Fiscal Year

GDP – gross domestic product
HHS – U.S. Department of Health and Human Services
HR – human resources
HSA – Homeland Security Act of 2002
IIE – Institute of International Education
IMG – International Medical Graduate
INA – Immigration and Nationality Act
IRFA – Initial Regulatory Flexibility Analysis
IRS – U.S. Internal Revenue Service
IT – information technology
LCA – Labor Condition Application
MSA – Metropolitan Statistical Area
NAFSA – National Association of Foreign Student Advisers
NAICS – North American Industry Classification System
NEPA – National Environmental Policy Act
NPRM – notice of proposed rulemaking
OEWS – Occupational Employment and Wage Statistics
OFLC – Office of Foreign Labor Certification
OMB – Office of Management and Budget
OPQ – Office of Performance and Quality
OPT – Optional Practical Training
PRA – Paperwork Reduction Act of 1995
Pub. L. – Public Law
PWD – prevailing wage determination
RFA – Regulatory Flexibility Act of 1980
RIA – regulatory impact analysis
SBA – U.S. Small Business Administration
SCA – Service Contract Act
Secretary – Secretary of Homeland Security
SOC – Standard Occupational Classification
STEM – Science, Technology, Engineering, and Math
SVP – Specific Vocational Preparation
UMRA – Unfunded Mandates Reform Act 1995
U.S.C. – United States Code
USCIS – U.S. Citizenship and Immigration Services

I. Executive Summary

DHS is amending its regulations governing the H-1B cap selection process. This final rule implements a weighted selection process that will generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels. This final rule follows a notice of proposed rulemaking (NPRM) issued on this topic on September 24, 2025, "Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions," 90 FR 45986 (Sept. 24, 2025).

A. Purpose and Summary of the Regulatory Action

The purpose of this rule is to allow DHS to implement the numerical cap in a way that incentivizes employers to offer higher wages, or to petition for positions requiring higher skills and higher-skilled aliens, that are commensurate with higher wage levels. This weighted selection process will generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels, to better serve the congressional intent for the H-1B program. Moreover, it will disincentivize abuse of the H-1B program to fill relatively lower-paid, lower-skilled positions, which is a significant problem under the present H-1B program.

Through this rule, DHS is amending the process by which USCIS selects H-1B registrations for unique beneficiaries for filing of H-1B cap-subject petitions (or H-1B petitions for any year in which the registration requirement is suspended) to implement a weighted selection process generally based on each beneficiary's equivalent wage level. When random selection is required because USCIS receives more registrations (or petitions) than USCIS projects to be needed to meet the numerical allocations, USCIS will conduct a weighted selection among the registrations for unique beneficiaries (or petitions) received generally based on the highest Occupational Employment and Wage Statistics (OEWS) wage level that the beneficiary's proffered wage will equal or exceed for the relevant Standard Occupational Classification (SOC) code in the area(s) of intended employment. Under this process, registrations for unique beneficiaries or petitions will be assigned to the relevant OEWS wage level and entered into the selection pool as follows: registrations for unique beneficiaries or petitions assigned wage level IV will be entered into the selection pool four times, those assigned wage level III will be entered into the selection pool three times, those assigned wage level II would be entered into the selection pool two times, and those assigned wage level I will be entered into the

selection pool one time. Each unique beneficiary will only be counted once toward the numerical allocation projections, regardless of how many registrations were submitted for that beneficiary or how many times the beneficiary is entered in the selection pool.

As noted in the NPRM, although DHS is not codifying a severability clause in the regulatory text, DHS intends for the provisions of this rule to be severable from one another as well as severable from the registration requirement more broadly and the beneficiary-centric selection methodology. The absence of codified severability language is solely to avoid potential confusion within 8 CFR 214.2, which governs a wide range of nonimmigrant classifications beyond the H-1B program and already contains multiple other severability provisions. *See* 90 FR at 45996.

B. Summary of Costs and Benefits

Table 1.1. Summary of Provisions and Impacts of the Rule

Final Rule Provisions	Description of the Change to Provisions	Estimated Costs/Transfers of Provisions	Estimated Benefits of Provisions
1. Required Information on the Registration	A registrant will be required to select the box for the highest OEWS wage level that the beneficiary's wage generally equals or exceeds and also will be required to provide the SOC code for the proffered position and the area of intended employment that served as the basis for the OEWS wage level indicated on the registration.	Quantitative: Petitioners - □ DHS estimates costs will be $15 million due to the additional time burden associated with the registration tool. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None □ DHS/USCIS –- Submission of additional wage level information, the SOC code, and area of intended employment on the electronic registration form will allow USCIS to further improve the integrity of the H-1B cap selection processes.
2. Weighting and Selecting Registrations (or petitions if registration is suspended)	DHS implements a wage-based selection process that will operate in conjunction	Quantitative: Petitioners - □ None	Quantitative: Petitioners and H-1B Workers-

	with the existing beneficiary-centric selection process for registrations. When there is random selection USCIS will enter each unique beneficiary (or petition, as applicable) into the selection pool in a weighted manner: a beneficiary (or petition) assigned wage level IV will be entered into the selection pool four times; level III, three times; level II, two times; and level I, one time.	DHS/USCIS - □ None Qualitative: Petitioners - □ None Transfer: H-1B workers □ Due to the weighted registration selection process, DHS estimates that $858 million of wages will be transferred from wage level I H-1B workers to higher wage level H-1B workers in FY2026, $1,717 million in FY2027, $2,575 million in FY2028, $3,434 million in FY2029, and $4,292 million in each year from FY2030 through FY2035. This transfer will be a cost to the wage level I H-1B worker who will lose the wage associated with selected H-1B registrations. This transfer also will be a benefit to the higher wage level H-1B workers who will receive a wage associated with selected H-1B registrations. Petitioners – □ There will be an unquantifiable transfer from the petitioners who would have hired wage level I H-1B workers to the petitioners who will hire workers at higher wage levels. This transfer will be a cost in terms of lost producer surplus to the petitioners who registered at wage level I and were not selected due to the changes. This transfer will be an	□ Total benefits of $502 million in FY2026, $1,004 million in FY2027, $1,506 million in FY2028, $2,008 million in FY2029, and $2,510 million in each year from FY2030 through FY2035 estimated in difference of wage paid to the higher wage level H-1B workers. DHS/USCIS - □ By engaging in a wage-level-based weighting of registrations for unique beneficiaries, DHS will better ensure that initial H-1B visas and status grants will more likely go to the higher-skilled or higher-paid beneficiaries. Facilitating the admission of higher-skilled workers “would benefit the economy and increase the United States’ competitive edge in attracting the ‘best and the brightest’ in the global labor market,” consistent with the goals of the H-1B program. Qualitative: Petitioners - □ None DHS/USCIS - □ None

		unquantifiable benefit in terms of gained producer surplus to the petitioners who registered at higher wage levels and got their H-1B registrations selected due to the higher probability of getting selected. □ There will also be an unquantified transfer and benefit from an increase in state and Federal payroll taxes paid to the government by the petitioner. DHS/USCIS – □ None	
3. Required Information on the Petition	The information required for the registration process will also be collected on the petition. Petitioners will be required to submit evidence of the basis of the wage level selected on the registration as of the date that the registration underlying the petition was submitted.	Quantitative: Petitioners - □ DHS estimates this cost will be $15 million due to the additional time burden associated with filing the H-1B petition. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS - □ Submission of additional information on the petition form (including wage level information and the SOC code), and evidence of the basis of the wage level selected, will allow USCIS to further improve the integrity of the H–1B cap selection and adjudication processes.
4. Process Integrity	The final rule will require an H-1B petition filed after registration selection to contain and be supported by the same identifying information and position information, including OEWS wage level, SOC code, and area of intended	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners –	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners –

	employment provided in the selected registration and indicated on the LCA used to support the petition. The final rule will also allow USCIS to deny a subsequent new or amended petition or revoke an approved petition if USCIS were to determine that the filing of the new or amended petition was part of the petitioner's attempt to unfairly increase odds of selection during the registration selection process.	□ DHS estimates that the final rule could lead to an increase in the number of denials or revocations of H-1B petitions DHS/USCIS – □ None	□ None DHS/USCIS – □ These changes will lead to improved program integrity for USCIS.

C. No Changes from the Notice of Proposed Rulemaking

Following consideration of all public comments received on the NPRM, DHS is issuing this final rule as proposed in the NPRM, without modifications to the regulatory text.

D. Implementation

This rule will be effective in time for the FY 2027 registration season. The changes in this final rule will apply to all registrations (or petitions, in the event that registration is suspended), including those for the advanced degree exemption, submitted on or after the effective date of the final rule. The treatment of registrations and petitions filed prior to the effective date of this final rule will be based on the regulatory requirements in place at the time the registration or petition, as applicable, is properly submitted. DHS has determined that this manner of implementation best balances operational considerations with fairness to the public.

II. Background

A. Legal Authority

The Secretary of Homeland Security (Secretary)'s authority for these regulatory amendments is found in various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 et seq., and the Homeland Security Act of 2002 (HSA), Pub. L.

107-296, 116 Stat. 2135, 6 U.S.C. 101 et seq. General authority for issuing this final rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.[1] Further authority for these regulatory amendments is found in:

- Section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), which establishes the H-1B nonimmigrant classification;
- Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;
- Section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), which, *inter alia*, authorizes the Secretary to prescribe how an importing employer may petition for nonimmigrant workers, including nonimmigrants described at section 101(a)(15)(H)(i)(b) of the INA, 8 U.S.C. 1101(a)(15)(H)(i)(b), as well as the form of the petition and the information that an importing employer must provide in the petition;
- Section 214(g) of the INA, 8 U.S.C. 1184(g), which, *inter alia*, prescribes the H-1B numerical limitations, various exceptions to those limitations, and the period of authorized admission for H-1B nonimmigrants;

[1] Although several provisions of the INA discussed in this final rule refer exclusively to the "Attorney General," such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 552(d), 557; 8 U.S.C. 1103(a)(1), (g), 1551 note; *Nielsen* v. *Preap*, 586 U.S. 392, 397 n.2 (2019); *see also* 6 U.S.C. 522 ("Nothing in this chapter, any amendment made by this chapter, or in section 1103 of Title 8, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.").

- Section 214(i) of the INA, 8 U.S.C. 1184(i), which sets forth the definition and requirements of a "specialty occupation";
- Section 235(d)(3) of the INA, 8 U.S.C. 1225(d)(3), which authorizes "any immigration officer . . . to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of [the INA] and the administration of [DHS]";
- Section 287(b) of the INA, 8 U.S.C. 1357(b), which authorizes the taking and consideration of evidence "concerning any matter which is material or relevant to the enforcement of [the INA] and the administration of [DHS]";
- Section 101(b)(1)(F) of the HSA, 6 U.S.C. 111(b)(1)(F), which provides that a primary mission of DHS is to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland";
- Section 402 of the HSA, 6 U.S.C. 202, which charges the Secretary with "[e]stablishing and administering rules[2] . . . governing the granting of visas or other forms of permission . . . to enter the United States" and "[e]stablishing national immigration enforcement policies and priorities"; *see also* HSA sec. 428, 6 U.S.C. 236; and
- Section 451(a)(3) and (b) of the HSA, 6 U.S.C. 271(a)(3) and (b), transferring to USCIS the authority to adjudicate petitions for nonimmigrant status, establish

[2] Section 102(e) of the HSA, 6 U.S.C. 112(e), provides that "the issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, except as specifically provided in this chapter, in laws granting regulatory authorities that are transferred by this chapter, and in laws enacted after November 25, 2002."

policies for performing that function, and set national immigration services policies and priorities.

B. Background on H-1B Registration

The H-1B visa program allows U.S. employers to temporarily hire foreign workers to perform services in a specialty occupation, services related to a U.S. Department of War (DOW) cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling. *See* INA sec. 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b); Immigration Act of 1990, Pub. L. 101-649, sec. 222(a)(2), 104 Stat. 4978 (Nov. 29, 1990); 8 CFR 214.2(h). A specialty occupation is defined as an occupation that requires the (1) theoretical and practical application of a body of highly specialized knowledge, and (2) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum qualification for entry into the occupation in the United States. *See* INA sec. 214(i)(l), 8 U.S.C. 1184(i)(l).

Congress has established limits on the number of foreign workers who may be granted initial H-1B nonimmigrant visas or status each fiscal year (FY) (commonly known as the "cap"). *See* INA sec. 214(g), 8 U.S.C. 1184(g). The total number of foreign workers who may be granted initial H-1B nonimmigrant status during any fiscal year may not exceed 65,000. *See* INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A). Certain petitions are exempt from the 65,000 numerical limitation.[3] *See* INA secs. 214(g)(5) and (7), 8 U.S.C. 1184(g)(5) and (7). The annual exemption from the 65,000 cap for H-1B

[3] Exempt petitions are petitions for (1) employment (or an offer of employment) at an institution of higher education or a related affiliated nonprofit entity, (2) employment (or an offer of employment) at a nonprofit research organization or a government research organization, or (3) H-1B workers who have earned a qualifying U.S. master's degree or higher degree. Also exempt are those petitions for beneficiaries who have previously been counted under the cap, unless eligible for a full 6-years of authorized admission when the petition is filed, and who seek to change jobs or extend their stay during their 6-year period of authorized admission, and those exempt from the 6-year period of authorized admission limitation based on section 104(c) or 106(a) and (b) of the American Competitiveness in the Twenty-First Century Act (AC21), Pub. L. 106-313, 114 Stat. 1254 (Oct. 17, 2000), as amended by section 11030A of the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107-273, 116 Stat. 1758 (2002).

workers who have earned a qualifying U.S. master's or higher degree may not exceed 20,000 foreign workers. *See* INA sec. 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C).

To manage the annual cap, USCIS used a random selection process in years of high demand to determine which petitions were selected toward the projected number of petitions needed to reach the annual H-1B numerical allocations. In order to better manage the selection process, DHS created a registration requirement for H-1B cap-subject petitions, which was first implemented in 2020 for the FY 2021 cap season. Through issuance of a final rule in 2019, "Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens," DHS developed a new way to administer the H-1B cap selection process to streamline processing and provide overall cost savings to employers seeking to file H-1B cap-subject petitions. *See* 84 FR 888 (Jan. 31, 2019). Under the current registration process, prospective petitioners (also known as registrants) that seek to employ H-1B cap-subject workers must first submit a registration for each requested worker. The H-1B selection process is then run on properly submitted electronic registrations. Only those with valid selected registrations are eligible to file H-1B cap-subject petitions. 8 CFR 214.2(h)(8)(iii)(A)(*1*).

In February 2024, DHS implemented a beneficiary-centric selection process for H-1B registrations to better ensure each beneficiary will have the same chance of being selected, regardless of the number of registrations submitted on his or her behalf, among other integrity measures. 89 FR 7456 (Feb. 2, 2024). Under this beneficiary-centric selection process, registrations are counted based on the number of unique beneficiaries who are registered. 8 CFR 214.2(h)(8)(iii)(A)(*4*). Each unique beneficiary is counted once toward the random selection, regardless of how many registrations are submitted for that beneficiary. *Id.* A prospective petitioner whose registration is selected is eligible to file an H-1B cap-subject petition based on the selected registration during the associated filing period. 8 CFR 214.2(h)(8)(iii)(A)(*1*).

C. Need for Regulatory Reform

Congress provided DHS with the authority to better ensure a fair, orderly, and efficient allocation of H-1B cap numbers based on reasoned decision making, including consideration of the overall statutory scheme and purpose of the classification: the selection of highly skilled and highly paid nonimmigrants in the United States while protecting the wages, working conditions, and job opportunities of U.S. workers. Congressional intent behind creating the H-1B program was, in part, to help U.S. employers fill labor shortages in positions requiring highly skilled or highly educated workers.[4] A key goal of the program at its inception was to help U.S. employers obtain the temporary employees they need to meet their business needs to remain competitive in the global economy.[5] To address legitimate countervailing concerns of the adverse impact foreign workers could have on U.S. workers, Congress enacted a number of measures intended to protect U.S. workers, including the annual numerical limitations. Congress was concerned that a surplus of foreign labor could depress wages for all workers in the long run and recognized the cap as a means of "continuous monitoring of all admissions."[6]

As noted above, USCIS has used a random selection process in years of high demand to determine which registrations (or petitions, as applicable) are selected toward the projected number needed to reach the annual H-1B numerical allocations. While the current random selection of petitions or registrations is reasonable, DHS believes it is neither the optimal, nor the exclusive method of selecting registrations or petitions

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[4] *See* H.R. Rep. 101-723(I) (1990), as reprinted in 1990 U.S.C.C.A.N. 6710, 6721.

[5] *See* Bipartisan Policy Center, Immigration in Two Acts, at 7 (Nov. 2015), https://bipartisanpolicy.org/wp-content/uploads/2019/03/BPC-Immigration-Legislation-Brief.pdf, citing H.R. Rep. 101-723(I) supra note 10 at 6721 ("At the time [1990], members of Congress were also concerned about U.S. competitiveness in the global economy and sought to use legal immigration as a tool in a larger economic plan, stating that 'it is unlikely that enough U.S. workers will be trained quickly enough to meet legitimate employment needs, and immigration can and should be incorporated into an overall strategy that promotes the creation of the type of workforce needed in an increasingly global economy.'").

[6] *See* H.R. Conf. Rep. 101-955, at 126 (1990), as reprinted in 1990 U.S.C.C.A.N. 6784, 6790-91.

toward the numerical allocations when more registrations or petitions, as applicable, are simultaneously submitted than projected as needed to reach the numerical allocations. Pure randomization does not serve the ends of the H-1B program or congressional intent to help U.S. employers fill labor shortages in positions requiring highly skilled workers.[7]

DHS believes a better reasoned policy, consistent with the intent of the H-1B statutory scheme, is to utilize the numerical cap in a way that incentivizes a U.S. employer's recruitment of beneficiaries for positions requiring the highest skill levels within the visa classification or otherwise earning the highest wages in an occupational classification and area of intended employment, which generally correlate with higher skill levels. Put simply, because demand for H-1B visas has exceeded the annual supply for more than a decade,[8] DHS prefers that simultaneously submitted registrations for cap-subject H-1B visas be selected in a manner that favors beneficiaries earning the highest wages relative to their SOC codes and area(s) of intended employment.

While DHS prefers that cap-subject H-1B visas be allocated in a manner that favors beneficiaries earning the highest wages, DHS also recognizes the value in maintaining the opportunity for employers to secure H-1B workers at all wage levels. In this respect, this final rule differs from the wage-based selection rule that DHS proposed and finalized in 2020 and 2021, respectively.[9] Although the 2021 H-1B Selection Final

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[7] *See* H.R. Rep. 101-723(I) (1990), as reprinted in 1990 U.S.C.C.A.N. 6710, 6721 (stating "The U.S. labor market is now faced with two problems that immigration policy can help to correct. The first is the need of American business for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found and the need for other workers to meet specific labor shortages.").

[8] Total Number of H-1B Cap Registration Submissions and Selections, FY 2021 – FY 2025, USCIS Office of Performance and Quality (OPQ), data queried 3/2025, TRK #17518; Total Number of H-1B Cap-Subject Petitions Submitted, FY 2016 – FY 2020, USCIS SCOPS, June 2019. *See also* Jill H. Wilson, Congressional Research Service, Temporary Professional Foreign Workers: Background, Trends, and Policy Issues (June 9, 2022), https://www.congress.gov/crs-product/R47159.

[9] *See* "Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions," 85 FR 69236 (Nov. 2, 2020); "Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions," 86 FR 1676 (Jan. 8, 2021).

Rule was subsequently vacated[10] and then withdrawn,[11] it would have ranked and selected registrations generally based on the highest equivalent prevailing wage level, as opposed to selecting by unique beneficiary and assigning a weight to them as in this finalized selection process. The 2021 H-1B Selection Final Rule was expected to result in the likelihood that registrations for level I wages would not be selected, as well as a reduced likelihood that registrations for level II would be selected. 86 FR 1676, 1724 (Jan. 8, 2021). Although DHS believes the selection process finalized under the 2021 H-1B Selection Final Rule was a reasonable approach to facilitate the admission of higher-skilled or higher-paid workers, DHS believes that rule did not capture the optimal approach because it effectively left little or no opportunity for the selection of lower wage level or entry level workers, some of whom may still be highly skilled. Unlike the 2021 H-1B Selection Final Rule, under this final rule, USCIS will assign a weight to—rather than rank and select—registrations for each unique beneficiary generally based on the corresponding OEWS wage level.

By engaging in a wage-level based weighting of registrations for unique beneficiaries, DHS will better ensure that the H-1B cap selection process favors relatively higher-skilled, higher-valued, or higher-paid foreign workers rather than continuing to allow numerically-limited cap numbers to be allocated predominantly to workers in lower skilled or lower paid positions.[12] Ultimately, this final rule will incentivize employers to

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[10] *See Chamber of Commerce of the U.S.* v. *DHS,* No. 4:20-cv-07331, 2021 WL 4198518 (N.D. Cal. Sept. 15, 2021) (vacating the rule as improperly issued but not reaching the merits of plaintiffs' alternative arguments).

[11] Following several months of litigation, on September 15, 2021, the court vacated the rule and remanded the matter to DHS and DHS subsequently withdrew the rule. On December 22, 2021, DHS issued a final rule to withdraw the final rule published on January 8, 2021, because that rule had been vacated by a Federal district court. "Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions, Implementation of Vacatur," 86 FR 72516 (Dec. 22, 2021).

[12] *See* Daniel Costa & Ron Hira, Economic Policy Institute, H-1B Visas and Prevailing Wage Level (May 4, 2020), https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels/ (pointing to data that "all H-1B employers, but especially the largest employers, use the H-1B program either to hire relatively lower-wage workers (relative to the wages paid to other workers in their occupation) who possess ordinary skills or to hire skilled workers and pay them less than the true market value"); George Fishman, Center for Immigration Studies, Elon Musk is Right about H-1Bs (Jan. 9, 2025), https://cis.org/Report/Elon-Musk-

offer higher wages or higher skilled positions to H-1B workers and disincentivize the existing widespread use of the H-1B program to fill lower paid or lower skilled positions, without effectively precluding beneficiaries with lower wage levels or entry level positions.[13] Facilitating the admission of higher-skilled workers "would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market," consistent with the goals of the H-1B program.[14]

This rule is consistent with the Presidential Proclamation 10973 of September 19, 2025, "Restriction on Entry of Certain Nonimmigrant Workers" ("H-1B Proclamation"), which directed the Secretary of Homeland Security to initiate a rulemaking to prioritize the admission as nonimmigrants of high-skilled and high-paid aliens, consistent with INA sections 101, 212, and 214 of the INA, 8 U.S.C. 1101, 1182, and 1184. 90 FR 46027 (Sept. 24, 2025). As noted in the H-1B Proclamation, the H-1B nonimmigrant visa program was created to bring highly skilled temporary workers into the United States, but the program has been deliberately exploited to bring in lower-paid, lower-skilled workers to the detriment of U.S. workers.[15] Further, many employers, particularly employers in certain sectors, have abused the current H-1B framework to artificially suppress wages,

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Right-about-H1Bs (noting the benefit of giving preference to prospective H-1B workers who are "the best and brightest (those promised the highest salaries)"); Norm Matloff, Barron's, Where are the 'Best and Brightest?' (June 8, 2013), https://www.barrons.com/articles/SB50001424052748703578204578523472393388746 ("The data show that most of the foreign tech workers are ordinary folks doing ordinary work."); Norman Matloff, Center for Immigration Studies, H-1Bs: Still Not the Best and the Brightest (May 12, 2008), https://cis.org/Report/H1Bs-Still-Not-Best-and-Brightest (presenting "data analysis showing that the vast majority of the foreign workers—including those at most major tech firms—are people of just ordinary talent, doing ordinary work."); Adam Ozimek, Connor O'Brien, & John Lettieri, Economic Innovation Group, Exceptional by Design: How to Fix High-Skilled Immigration to Maximize American Interests (Jan. 2025), https://eig.org/wp-content/uploads/2025/01/Exceptional-by-Design.pdf ("Wages are a clear expression of the value firms expect a worker to contribute, yet the H-1B gives no preference to workers with higher salary offers.").

[13] *See* Daniel Costa & Ron Hira, Economic Policy Institute, H-1B Visas and Prevailing Wage Level (May 4, 2020), https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels/.

[14] *See* Muzaffar Chishti & Stephen Yale-Loehr, Migration Policy Institute, The Immigration Act of 1990: Unfinished Business a Quarter-Century Later (July 2016), https://www.migrationpolicy.org/sites/default/files/publications/1990-Act_2016_FINAL.pdf ("Sponsors of [the Immigration Act of 1990, which created the H–1B program as it exists today,] believed that facilitating the admission of higher-skilled immigrants would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market.").

[15] Throughout this rule DHS uses the term "U.S. workers" but notes that the Proclamation uses the term "American workers." DHS considers these terms synonymous for purposes of this rule.

resulting in a disadvantageous labor market for U.S. citizens, while at the same time making it more difficult to attract and retain the highest skilled subset of temporary workers.

DHS believes that the current random selection of registrations (or petitions, as applicable) has contributed to the systematic abuse of the H-1B program as described in the H-1B Proclamation. Despite improvements DHS has made over the years to improve the integrity of the H-1B registration process and the H-1B program overall, companies continue to exploit the current legal framework to obtain a pool of relatively low-wage workers that are detrimental to U.S. workers' wages, working conditions, and job opportunities. This final rule will help reverse this trend and help the program meet its original goals of attracting highly skilled foreign workers while better protecting the wages, working conditions, and job opportunities of U.S. workers.

III. Response to Public Comments on the Proposed Rule

In response to the proposed rule, DHS received 2,731 comments during the 30-day period for public comments on the NPRM. DHS received additional comments related to the associated information collections during the remainder of the 60-day period for public comments in accordance with the Paperwork Reduction Act.

Commenters included individuals (including U.S. workers), companies, law firms, professional organizations, advocacy groups, nonprofit organizations, universities, healthcare providers, and trade and business associations. Some commenters expressed support for the rule or offered suggestions for improvement. Some expressed general opposition to the rule and some offered alternatives. For some of the public comments, DHS could not ascertain whether the commenter supported or opposed the proposed rule.

DHS has reviewed all of the public comments received in response to the NPRM that were submitted in accordance with the instructions contained in the NPRM during the comment period. In this final rule, DHS has responded to public comments relevant to

the NPRM and has addressed the significant issues raised therein. DHS's responses are grouped by subject area, with a focus on the most common issues and suggestions raised by commenters.

A. Support for the Rule and DHS Justifications

1. General Support for the Rule

Comment: Multiple commenters expressed general support for the rule. Other commenters explained their support in general terms that mentioned: promoting a more merit-based H-1B visa system; expanding employment options for U.S. citizens; promoting a more highly skilled workforce; providing an effective mechanism for weighted selection using wages across different locations; and promoting transparency in selection criteria.

Some commenters said the proposed approach would better align with the H-1B program's purpose by attracting top global talent and/or supporting innovation and economic growth in the United States while also reducing wage-based exploitation. Commenters predicted the new selection process would strengthen the U.S. economy and enhance the United States' competitiveness.

Multiple commenters stated that the new selection process would improve program integrity. Commenters generally noted that the wage-based selection process would improve both the integrity of the registration program and the H-1B program overall. Some commenters praised DHS's efforts to protect the registration selection process against gaming by employers.

Response: DHS agrees that this rule will improve program integrity and will better ensure that the H-1B cap selection process favors relatively higher-skilled, higher-valued, or higher-paid foreign workers, consistent with the congressional intent of helping U.S. employers hire highly skilled aliens to address gaps in the U.S. workforce. DHS agrees with the commenters' statements that the weighted selection process

implemented by this rule will expand employment prospects for U.S. citizens, support innovation, encourage skill development, reduce wage-based exploitation, promote integrity and transparency, and help to strengthen the economy. By facilitating the admission of highly skilled, highly paid H-1B workers, this rule helps the United States attract more highly skilled workers in the global labor market, ultimately enhancing U.S. competitiveness.

2. Protecting U.S. Workers and Wages

Comment: Many commenters supported the proposed rule, reasoning that it would address concerns about the current H-1B program's harmful effects on U.S. workers. Commenters criticized the wage undercutting and wage suppression allowed by the current H-1B cap selection process. Some commenters shared their personal observations about how they, their colleagues, or U.S. workers have been harmed by companies that exploit the H-1B program to bring in large numbers of lower-skilled, lower-paid foreign workers.

Multiple commenters predicted that the new H-1B selection process would benefit U.S. workers. Commenters emphasized that the skill- and wage-based selection criteria would promote fairness; discourage fraudulent practices; encourage prospective beneficiaries to pursue higher-paying, legitimate employment opportunities; and better complement the U.S. labor market. Commenters remarked that the new system would raise wages to more accurately reflect market demand for needed skills. Another noted the rise of artificial intelligence (AI) and the need to protect job opportunities for U.S. workers and graduates. Some commenters remarked that this rule would not only help U.S. citizens, but also lawful permanent residents and legal immigrant workers whose job opportunities have been negatively impacted by low-skill, low-wage H-1B workers.

Many commenters predicted that the new selection process would encourage the hiring of U.S. workers by disincentivizing information technology (IT) staffing

companies from hiring cheap, foreign labor. Many commenters said they support efforts to reform the H-1B registration process and expressed concern about IT consulting companies that hire lower-skilled, lower-paid foreign workers who displace U.S. workers. Commenters expressed criticism of the way some IT staffing companies can misuse or abuse the system, whether through loopholes or illegal practices. Some commenters cited data showing that currently 80% of H-1B visas are for workers in wage levels I and II, a statistic they tied to lower wages in affected industries.

Response: DHS agrees that this rule will reduce problems with the H-1B program, which companies have been systematically exploiting to bring in large numbers of lower-skilled, lower-paid foreign workers to the detriment of U.S. workers. In particular, U.S. workers in computer-related fields have been significantly harmed by the prominent manipulation of the H-1B program by IT or outsourcing firms.[16] This rule will incentivize employers to use the H-1B program to primarily fill relatively higher-paid, higher-skilled positions to supplement, rather than replace, U.S. workers. Prioritizing registrations or petitions, as applicable, on the basis of equivalent wage levels will help restore the congressional intent for the program of helping U.S. employers fill labor shortages in positions requiring highly skilled and/or highly educated workers.

DHS agrees that a decrease in the hiring of lower-paid foreign labor will encourage U.S. employers to hire available and qualified U.S. workers, potentially improving the wages, working conditions, and job opportunities for U.S. workers, particularly for certain positions and industries that have seen wage suppression or stagnation due to lower-paid H-1B workers. The weighted selection process finalized in this rule is expected to result in a marked decrease in registrations (or petitions, as applicable) being selected for workers who will be paid a level I corresponding wage, with a greater

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[16] *See* "Restriction on Entry of Certain Nonimmigrant Workers," 90 FR 46027 (Sept. 24, 2025*). See also* Daniel Costa & Ron Hira, Economic Policy Institute, H-1B Visas and Prevailing Wage Level (May 4, 2020), https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels.

percentage of total selected registrations or petitions being for beneficiaries who will be paid a level III or level IV corresponding wage.

DHS also agrees this rule will benefit lawful permanent residents and other legal immigrant workers who have been similarly harmed by lower-paid H-1B workers.

3. Positive Impacts on Entry-Level Workers and Recent Graduates

Comment: Many commenters said that the proposed rule would alleviate competition and provide more entry-level positions for U.S. workers. Citing previously published DHS data indicating that the "number of wage level I petitions will decrease by 10,099 annually," a commenter predicted that this decrease would encourage petitioners to seek out U.S. workers for these entry-level positions. One commenter predicted that the new rule will positively impact early career professionals, both U.S. workers and H-1B nonimmigrants, by raising wages.

Many commenters remarked that this rule would help U.S. college students and other recent graduates, reasoning that the new selection process will help increase their chances of gainful employment and decrease competition against lower-paid foreign workers. Commenters also specifically noted that the proposed weighted selection process would offer some improvements for U.S. graduates in science, technology, engineering, and math (STEM) fields and other U.S. workers who are just starting out their IT careers. Some commenters noted the significant challenges faced by current U.S. graduates seeking work in the IT or STEM fields and stated that this rule would encourage U.S. students to pursue STEM training and positions.

Response: DHS agrees that this rule will help to better protect the wages, working conditions, and job opportunities of U.S. workers, including U.S. college students and recent graduates. Employers that might have petitioned for cap-subject H-1B workers to fill relatively lower-paid, lower-skilled positions may be incentivized to hire available and qualified entry-level U.S. workers for those positions as a result of this rule. DHS

also agrees that this rule will offer improvements for U.S. students and graduates in STEM fields. As stated in the H-1B Proclamation, abuse of the H-1B program is creating disincentives for future U.S. workers to choose STEM careers. U.S. college graduates in some STEM fields are facing high unemployment rates as compared to graduates with other majors.[17] 90 FR 46027 (Sept. 24, 2025). Employers have abused the H-1B program to artificially suppress wages, resulting in a disadvantageous labor market for U.S. citizens and other legal workers, particularly in STEM fields. *Id.*

4. Positive Impacts on International Students and New Graduates

Comment: Several commenters expressed appreciation for the proposed rule, stating that it would be greatly beneficial to international students and graduates from U.S. universities who are highly skilled or have job offers at high wage levels. These commenters expressed frustration at not having been selected in several previous H-1B registration seasons despite earning level IV wages, saying that their chances of selection would have been much higher had a wage-based selection process been in place. A commenter similarly noted that a weighted selection will be more merit-based and favorable to students who invested in a U.S. education and have legitimate job offers, compared to the current random selection process which allows "many fake registrations" that "distort the odds." A commenter said the new rule would benefit international students graduating with master's degrees and Ph.D.'s.

Response: DHS agrees that this rule will be greatly beneficial to international students who are highly skilled and have job offers with wages that correspond to a higher wage level, as the rule will increase their chances of being selected in any future H-1B lottery relative to their chance in the current randomized selection process. DHS agrees that this rule could be beneficial to aliens who have recently completed a master's

[17] Federal Reserve Bank of New York, The Labor Market for Recent College Graduates, https://nyfed.org/collegelabor (last updated Aug. 1, 2025) (data from 2023).

or doctoral program and are seeking to enter the workforce. For these aliens, this rule will further increase their chance of being selected in the H-1B lottery relative to their chance in the current randomized selection process, to the extent that such aliens secure job offers with salaries that correspond to higher wage levels. It should also be noted that recent graduates with master's or higher degrees from U.S. institutions of higher education already benefit from the existing advanced degree exemption and cap selection order.

5. Positive Impacts on Companies and the Economy

Comment: Commenters articulated several ways that the proposed rule would benefit U.S. companies and the economy. For example, a commenter expressed support for the proposed rule and suggested it would encourage companies to hire the most qualified person for the job, which in turn helps companies succeed and improves the country's economy. Commenters stated that foreign professionals earning higher wages, in addition to contributing directly to innovation, may add more to the U.S. economy through gross domestic product (GDP), tax revenue, innovation output per capita, and consumer spending.

Some commenters mentioned ways this rule would help certain types of employers. For instance, a few commenters stated that the proposed rule would help start-ups hire and retain aliens with needed skills, while the current random selection process results in startups losing critical employees because most registrations go to other companies like consulting companies or outsourcing firms. A commenter stated that high-wage positions typically correspond to roles in cutting-edge sectors, such as AI, cybersecurity, semiconductor design, and advanced manufacturing, and stated that this rule would help companies attract and retain top global talent in these fields. A few commenters said the new weighted selection process would promote hiring of U.S. workers in industries key to national security. Another commenter praised the rule for

supporting U.S. workers and said the United States should focus on educating and developing doctors from within its own population rather than recruiting doctors from other countries.

Response: DHS agrees that the weighted selection process implemented by this rule will benefit some U.S. companies by facilitating the admission of highly skilled, highly paid workers, attracting the best and brightest in the global labor market. Unlike the current random selection process, which results in a higher proportion of lower wage and lower skilled H-1B workers, this rule will benefit companies of all types, including startups and those in critical sectors, that are seeking to hire highly skilled workers with wages that correspond to a higher wage level. These workers are more likely to spur innovation and help their employers succeed, ultimately benefiting the U.S. economy, whether directly through taxes paid, consumer spending, and contributions to corporate earnings, or indirectly through promoting growth in key industries, including those related to national security. Finally, DHS agrees that the new weighted selection process will help to better protect the wages, working conditions, and job opportunities for U.S. workers, including those in medicine and health-related fields.

B. Opposition to the Rule and Policy Objections

1. General Opposition to the Rule

Comment: Some commenters opposed the rule based on general policy concerns, stating that the rule would, for example, be unfair, produce uncertainty for businesses, reduce diversity and inclusiveness in the workplace, and "undermine[] the principles of equal opportunity that should guide immigration policy." Other commenters generally asserted that the rule would weaken American competitiveness or harm innovation in the United States. Other commenters generally described the benefits of the H-1B program (e.g., that it allows companies to invest in domestic facilities, create additional jobs for U.S. employees, fill gaps in technical and scientific areas where shortages exist, and hire

foreign workers with specialized skills which complement those of U.S. workers) and claimed that this rule is not needed.

Response: As discussed in greater detail in response to more specific comments later in this preamble, DHS disagrees with these commenters that the rule will result in the asserted harms; moreover, to the extent that harm may occur in any individual case, DHS believes that on balance, this approach is more likely to support the purposes of the H-1B program and the national interest. In addition, DHS disagrees that the rule is not needed, as it is well documented that the H-1B program has been deliberately and systematically exploited. The current random selection process has contributed to the ongoing exploitation of the H-1B program to benefit certain companies in certain sectors, while crowding out other companies and legitimate job seekers who have unsuccessfully sought to participate in the H-1B program. As noted in the H-1B Proclamation, the H-1B program has been deliberately exploited to replace, rather than supplement, U.S. workers with lower-paid, lower-skilled labor. 90 FR 46027 (Sept. 24, 2025). The large-scale replacement of U.S. workers through systemic abuse of the program has undermined both our economic and national security. 90 FR 46027 (Sept. 24, 2025). These results are contrary to the purpose of the H-1B program.

2. Fairness and Equal Opportunity Concerns

Comment: Many commenters expressed concerns about the fairness and equity of the proposed weighted selection process with some commenters saying the rule goes against U.S. values of opportunity and fairness. Other commenters stated that the current random selection process, though imperfect, provides all qualified applicants with an equal chance regardless of employer size, education level, or industry. The commenters stated that a weighted selection process would favor larger corporations, well-funded petitioners, and candidates with advanced U.S. degrees, unfairly disadvantaging skilled workers with comparable or greater expertise but different academic or geographic

backgrounds. Another commenter remarked that one of the most echoed sentiments online is that the wage-weighted rule "only helps the rich get richer" by linking selection chances to salary, which favors those from privileged backgrounds and high-paying industries. Some commenters stated that the proposed rule would create a "pay-to-play" system. Another commenter stated that it is not fair that people with talent but limited resources would be ignored because of this proposal, questioning when money became the main priority over skills and potential. Another commenter remarked that companies may "lowball" their employees in order to control their spending on H-1B visas, leading to more unfair treatment. Another commenter stated that the proposed rule would distort fair competition for labor and would discourage legitimate participation in the H-1B program.

Response: DHS believes that the ongoing exploitation of the H-1B program - to the detriment of U.S. workers and legitimate employers and job seekers who have been crowded out of the program - is contrary to the principles of fairness and equal opportunity. The current random selection process is not fair to U.S. workers whose wages may be adversely affected by an influx of relatively lower-paid H-1B workers, or to U.S. employers who have sought to petition for foreign workers at higher OEWS prevailing wage levels and are not selected. Regarding the concern about employers "lowballing" their employees to control costs on H-1B visas, DHS believes that as a result of this rule employers may choose to offer a higher wage to a prospective beneficiary whose skill level they value and who they wish to retain. Additionally, this rule may offer highly skilled H-1B workers greater leverage in negotiating for a higher salary, which in turn could encourage competition for labor among petitioners seeking similarly qualified workers.

DHS does not view the weighted selection process as a "pay-to-play" system, but rather a process that attracts the best and the brightest, increases the chance of selection

for those who will be paid wages at higher corresponding wage levels, and disincentives petitioning employers from offering wages at the lower corresponding wage levels. As stated throughout the NPRM, DHS believes that salary generally is a reasonable proxy for skill level.[18] The purpose of this rule is to implement the numerical cap in a way that will generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels. DHS believes this approach serves congressional intent for the H-1B program more faithfully than the current random selection process. DHS believes that this rule appropriately balances the interests of U.S. workers with the interests of petitioning employers and the alien workers they seek to employ as H-1B nonimmigrants.

Comment: Some commenters expressed concern that the proposed weighted selection process would complicate the registration selection process by creating uncertainty, complexity, and unfair bias. The commenters said that the weighting process would make outcomes harder to understand and undermine trust in the lottery, compared to the current random lottery which is transparent and simple to understand. A commenter likewise asserted that a "fundamental flaw" with the proposed rule's approach is that it retains the elements of uncertainty and randomness, such that someone being offered a $300,000 salary, for example, would have no certainty of winning the weighted lottery. Another commenter said that the rule adds uncertainty and makes workforce planning less predictable, thus making the H-1B program impractical to use.

Response: DHS disagrees with these commenters that the weighted selection process creates uncertainty and unpredictability. To the contrary, this rule will increase

[18] *See* "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program," 76 FR 3452, 3453 (Jan. 19, 2011) (it is a "largely self-evident proposition that workers in occupations that require sophisticated skills and training receive higher wages based on those skills."); Daniel Costa & Ron Hira, Economic Policy Institute, H-1B Visas and Prevailing Wage Level (May 4, 2020), https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels. ("Specialized skills should command high wages; such skills are typically a function of inherent capability, education level, and experience. It would be reasonable to expect that these workers should receive wages higher than the median wage.").

certainty and predictability by increasing the chances that a registration for a highly skilled, highly paid alien will be selected in the selection process. Under the current system, the chance that any particular beneficiary is selected in the lottery is just under 30 percent, regardless of how highly skilled that beneficiary may be. These low chances of selection increase uncertainty for all beneficiaries. In contrast, under this final rule the chances of selection for a beneficiary weighted at a level IV wage will increase to over 61 percent and a beneficiary weighted at a level III wage will increase to over 45 percent.

While the final rule retains some degree of uncertainty because it retains an element of randomness, DHS believes it is important to retain these aspects of the lottery. As stated in the NPRM, DHS believes it is optimal to increase the chances of selection for highly skilled aliens while maintaining the opportunity for employers to secure H-1B workers at all wage levels.

DHS disagrees that the weighted selection process finalized in this rule will complicate the H-1B registration selection process or make outcomes harder to understand. USCIS is fully prepared to implement the weighted selection process from an operational and technical perspective in time for the upcoming H-1B cap season. DHS believes that the public has received sufficient notice of the weighted selection process and that the parameters of the process have been made clear.

Finally, DHS disagrees that the weighted selection process undermines trust in the H-1B cap selection process. As previously described, the prevalent and systematic abuse of the current H-1B program undermines public trust. DHS believes that the new weighted selection process will restore trust in the H-1B program by returning the program to its original intended purpose of helping U.S. employers fill labor shortages in positions requiring highly skilled or highly educated workers while protecting the wages, working conditions, and job opportunities of U.S. workers, rather than allowing the continued abuse of the H-1B program to displace and otherwise harm U.S. workers.

3. Negative Impacts on Companies, the Workforce, and the Economy

Comment: Several commenters asserted that H-1B professionals drive innovation, productivity growth, and entrepreneurship. Some commenters addressed the contributions of international students to innovation and economic growth and said that limiting their job opportunities would undermine such growth. Other commenters specified that startups and small businesses are significant drivers of innovation and economic growth in the United States, and limiting their access to international talent could stifle such innovation and entrepreneurship. Other commenters said that innovation and breakthroughs often come from early-career professionals, startups, and research institutions that typically cannot compete with the salaries of larger, established companies. Another commenter stated that startups rely on the H-1B program to attract talented workers who possess "niche expertise," and that this rule will make the H-1B program more expensive and difficult to use, and ultimately limit the growth of U.S. tech innovation and global leadership.

Response: DHS disagrees that the rule will stifle innovation, economic growth, and global leadership. Rather than limiting access to international talent, DHS believes that this rule will facilitate employers of all types and sizes to attract and retain highly skilled and highly paid aliens. This rule will help the United States to attract the best and brightest workers by increasing the chance of selection for highly skilled, highly paid aliens who are more likely to spur innovation and make significant contributions to their employers and industry, while also better protecting the wages, working conditions, and job opportunities of U.S. workers.

Additionally, this rule does not treat people who work for startups or small-sized entities differently than those who work for other larger companies. While DHS recognizes that some startups and small businesses may operate on smaller margins compared to other companies, if an employer values a beneficiary's work and the unique

qualities the beneficiary possesses, the employer could offer a higher wage than required by the prevailing wage level to reflect that value. DHS recognizes that this could result in increased costs for a business, however, DHS believes that the tradeoff of having a greater chance to recruit or retain talented employees may offset these increased costs. If a company is unable to pay an employee a higher wage for a greater chance of selection, they could then try to find a substitute U.S. worker. This rule, by weighting selection, allows employers seeking workers at any wage level to have an opportunity for selection, such that they are not precluded from participating in the program solely because they are unable to pay a wage that corresponds to a higher wage level.

Comment: Commenters claimed that this rule would result in companies outsourcing more work overseas, directly contrary to the intent of this rule. Commenters remarked that employers who depend on entry-level talent would either cut back on hiring or outsource jobs abroad, reducing job creation within the United States. Some commenters specifically stated that the proposed rule would result in IT companies replacing onsite H-1B workers with lower-paid offshore resources, with some commenters remarking that this would be an additional way to undercut U.S. workers' wages by paying significantly lower salaries to offshore employees. A manufacturing association stated that in industries that cannot meet their labor force needs domestically, if companies cannot use the H-1B program to address shortages, employers may be incentivized to move production and workforce positions offshore. Another commenter noted that their industry will be unable to substitute lost global talent with U.S. workers who still need training and education, meaning that changes to the H-1B program will leave critical positions unfilled, slowing innovation and overall job growth. This same commenter went on to state that research from the Economic Innovation Group and George Mason University shows that restrictions on H-1B visas drives companies to

offshore work or expand operations abroad, undermining the goal of supporting U.S. workers.

Response: DHS disagrees that this rule will cause employers to outsource more jobs or move operations to other countries. While DHS acknowledges this rule may impose some costs to individual employers, the commenters do not address the countervailing impact on those employers benefited by this rule, including those U.S. employers offering level III and IV wages that will have higher chances of selection, or U.S. employers that have historically been squeezed out of the H-1B lottery that will likely see an increased chance to participate in the H-1B program. DHS believes that this rule, instead, will facilitate the admission of higher-skilled workers, which will benefit the economy and increase the United States' competitive edge in attracting the best and the brightest in the global labor market, consistent with the goals of the H-1B program.

DHS is not persuaded that U.S. companies would rather incur the time and expense to move their operations abroad instead of increasing their hiring of U.S. workers, particularly for entry level positions where U.S. workers have been replaced with lower-paid, lower-skilled foreign labor. DHS believes that U.S. employers are more likely to change their hiring practices in the United States, rather than offshoring work abroad, as evidenced by news articles highlighting how more and more companies have signaled their intent to increase their investment in America and hire more U.S. workers rather than to rely on foreign workers.[19] Likewise, DHS is not persuaded by the research

[19] *See, e.g.*, The White House, TRUMP EFFECT: A Running List of New U.S. Investment in President Trump's Second Term (Aug. 15, 2025), https://www.whitehouse.gov/articles/2025/08/trump-effect-a-running-list-of-new-u-s-investment-in-president-trumps-second-term/; Forbes, International Companies Bet Big On America: A New Wave Of US Jobs (Mar. 31, 2025), https://www.forbes.com/sites/jackkelly/2025/03/31/international-companies-bet-big-on-america-a-new-wave-of-us-jobs/; Praveen Paramasivam, Reuters, India's Tata Tech to hire more locals in US as Trump cracks down on immigration (Oct. 22, 2025), https://www.reuters.com/world/india/indias-tata-tech-hire-more-locals-us-trump-cracks-down-immigration-2025-10-23/; Craig Hale, Techradar Pro, Meta says it wants to invest $600 billion in US infrastructure and jobs by 2028 (Nov. 10, 2025), https://www.techradar.com/pro/meta-says-it-wants-to-invest-usd600-billion-in-us-infrastructure-and-jobs-by-2028.

cited by a commenter concluding that H-1B "visa restrictions lead to offshoring."[20] This analysis primarily discussed "visa restrictions" in terms of companies unable to hire H-1B workers due to the statutory 65,000 visa cap and not because they were not selected "by pure 'luck' of the H-1B lottery process." However, this rule does not restrict the number of H-1B visas available under the statutory cap, nor does it preclude any company from selection in the H-1B cap selection process.

Comment: Several commenters said large IT companies or outsourcing firms would disproportionately benefit from this rule, as they are more likely to pay higher wages and could exploit the proposed rule to their advantage, contrary to the intent of this rule. Commenters remarked that this approach would unfairly favor large, established corporations that are able to pay higher salaries, including the large tech companies that are the predominant users of the H-1B program, with one commenter claiming that this weighted lottery system "would exaggerate their dominance of the program." A commenter remarked that IT companies may end up profiting even more under the proposed rule, while others said that outsourcing companies would be "rewarded" by this rule and fill positions in areas of "less critical need." A few commenters claimed that the rule will actually increase the number of large IT outsourcing companies selected in the lottery, as these companies generally certify at levels II and III. For instance, a commenter claimed that "large IT outsourcers would be awarded 7.4 percent more visas under the proposed rule than under current policy" while other commenters cited an analysis indicating that large IT outsourcing firms would receive 8 percent more visas under the rule.

In addition to benefitting large outsourcing companies, a commenter said that the proposed system would also benefit other H-1B-dependent employers, even though they

[20] DHS reviewed the research cited by the commenter from the Economic Innovation Group and George Mason University entitled, Unintended Consequences of Restrictions on H-1B Visas (Jan. 28, 2021), https://www.mercatus.org/research/policy-briefs/unintended-consequences-restrictions-h-1b-visas.

pay less than other companies. The commenter explained that large outsourcers and other H-1B-dependent employers pay less than other H-1B employers, but they get certified at higher wage levels because they use H-1Bs for workers in lower-skilled, lower-paid occupations, and provided an analysis to support this contention.[21] This analysis indicated that the rule would increase the share of selected registrations for H-1B dependent companies by 4 percent.

Response: DHS disagrees with the assertion that the weighted selection process will disproportionately benefit large IT or outsourcing companies and H-1B-dependent employers that use the H-1B program to fill lower-skilled, lower-paid occupations. Under the new selection process, registrations or petitions for positions with salaries that correspond to lower wage levels will have a lower chance of selection than those with salaries that correspond to higher wage levels. This will incentivize all H-1B cap-subject employers, including outsourcing companies and H-1B dependent employers, to offer higher wages to increase their chances of selection, thereby aligning with the program's goal of prioritizing highly skilled and highly paid workers.

DHS acknowledges the analysis cited by some commenters that this rule will likely increase the share of selected registrations from large IT outsourcers and, to a lesser extent, H-1B dependent employers. However, this analysis appears to misunderstand the nature of the weighting process which is generally based on the highest wage level that *the proffered salary* would equal or exceed and is not based purely on Department of Labor (DOL) wage levels. For instance, commenters cited to a report that says: "On the surface, this seems like a merit-based reform: higher wages should mean higher skills. In reality, DOL's Wage Levels are very different from actual wages. The Wage Level framework was never designed to compare wages across

[21] Jeremy Neufeld, The 'Wage Level' Mirage: How DHS's H-1B Proposal Could Help Outsourcers and Hurt U.S.-Trained Talent, Inst. for Progress (Sept. 24, 2025), https://ifp.org/the-wage-level-mirage/.

occupations because it measures relative seniority within a job category, not actual pay. There are many workers paid at the highest DOL Wage Level but making below the median American wage, while some at the lowest DOL Wage Level are among the best-paid in the economy."[22] This statement does not acknowledge that the weighted registration process accounts for the actual salary proffered by employers, which could correspond to a higher wage level. For registration purposes, the requirements of the position corresponding to the DOL wage level would only be relevant if OEWS wage data is not available. But even if this analysis were reliable, DHS reiterates that the weighted selection process is not intended to treat any companies or industries better or worse than others. Again, the goal of this rule is to implement a weighted selection process that would generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, regardless of company type or industry.

Comment: Commenters wrote that the proposed rule would have a negative impact on the workforce and U.S. economy. Some commenters stated that the proposed rule would negatively impact the United States' ability to maintain key talent pipelines, asserting that entry-level positions are crucial for developing the future workforce and that removing early-career talent from the workforce pipeline would harm long-term economic growth. Another commenter remarked that the United States relies on the contributions of global talent for innovation, economic growth, and competitiveness.

A few commenters remarked that new or growing companies, which often hire foreign talent and would be disadvantaged by this rule, create most new U.S. jobs. One commenter asserted that in the technology industry, each H-1B request is associated with an increase of approximately five jobs, while another said that unemployment in technology fields declined from 3.4 percent to 3 percent over the past year, even as the

[22] Jeremy Neufeld, "The 'Wage Level' Mirage: How DHS's H-1B Proposal Could Help Outsourcers and Hurt U.S.-Trained Talent," Inst. for Progress (Sept. 24, 2025), https://ifp.org/the-wage-level-mirage/.

number of H-1B workers remained significant. A commenter pointed out that studies have shown that "high-skilled immigration causes large increases in productivity and economic growth in the United States" and that U.S. firms employing highly skilled international graduates are more likely to expand business, research, and development. Other commenters suggested that high-skilled immigration generates additional domestic employment opportunities, reduces unemployment in certain occupations, and complements U.S. workers rather than replacing them.

Some commenters stated that by making it difficult to hire recent graduates, the rules would interfere with investment and innovation in industries that rely on highly skilled entry-level workers to fill critical roles that cannot be met by the U.S. labor market alone. Similarly, a commenter said that limiting access to H-1B visas for early-career professionals would reduce the flow of new ideas, constrain entrepreneurship, and slow wage growth in high-productivity sectors. Another commenter stated that the proposed rule would reduce the diversity of specialty occupations in the U.S. workforce and weaken innovation. A commenter wrote that instead of benefiting U.S. workers, the rule would "hit entry- and mid-level workers the hardest, blocking young Americans" from certain jobs.

Response: The goal of this rule is to favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. DHS believes the weighted selection process implemented through this rule will best achieve this goal and disagrees that this rule will have a net negative impact on the workforce and the U.S. economy. Instead, DHS believes this rule will incentivize employers to proffer higher wages, or to petition for positions requiring higher skills and higher-skilled aliens that are commensurate with higher wage levels, thereby attracting the best and the brightest employees and promoting innovation across all industries and occupations. DHS further believes that increasing the chance of

selection for higher-skilled, higher-paid aliens will encourage competition and better protect the wages, working conditions, and job opportunities of U.S. workers.

Regarding the studies and benefits of high-skilled immigration mentioned by some commenters, DHS acknowledges that high-skilled immigration *in general* can be beneficial to companies, the workforce, and the economy at large. However, these studies and commenters do not acknowledge the specific problem that this rule addresses, which is the abuse of the H-1B program to bring in lower-skilled workers in lower-paid positions. Further, this rule favors the allocation to higher-skilled aliens but does not alter the numerical limitations, such that higher-skilled aliens who are selected and ultimately granted H-1B status may still provide the general benefits that the commenter alludes to, while better protecting the wages, working conditions and job opportunities of U.S. workers. DHS does not agree that the rule will 'hit entry and mid-level U.S. workers the hardest' or 'block young Americans' from jobs. The commenter offers no data connecting the weighted selection process to reduced job opportunities for U.S. workers. The rule does not change the number of H-1B cap-subject visas. It does not eliminate lower-wage jobs or employers' ability to hire or train entry-level workers. Employers must comply with statutory and regulatory requirements ensuring that H-1B workers do not adversely affect the wages and working conditions of U.S. workers. The purpose of the rule is not to raise H-1B wages at the expense of U.S. workers. Instead, by improving the probability that higher-wage H-1B positions are selected, the weighted selection process may reduce reliance on lower wage filings and can help preserve more entry- and mid-level employment opportunities for U.S. workers.

Comment: Some commenters remarked that negative impacts to U.S. industries would affect U.S. citizens and young Americans, stating that: losing access to educators would lead to fewer learning opportunities for American students; fewer international engineers would impact mid-sized manufacturers, slowing innovation and hurting U.S.

workers who rely on these jobs; fewer international doctors would impact healthcare for Americans; disadvantaging startups reduces opportunities for Americans; disadvantaging justice and public interest firms that rely on international workers could create inequities in the justice system, ultimately harming U.S. citizens; disadvantaging engineers and architects would shut out mid-sized construction companies, which would slow projects and drive up costs for American homeowners; and disadvantaging companies involved in supply chain operations can increase delivery costs and create delays that would impact American consumers. Another commenter noted that as a U.S. citizen, they may see fewer employment opportunities if research labs that depend on international workers downsize because of the proposed rule. A commenter claimed that the rule would result in costs to the U.S. economy in terms of U.S. employers not having access to necessary skills, which would delay productivity and innovation, disrupt delivery of essential services to the American public, and cause employers to abandon projects or move the projects overseas. The commenter concluded that these costs outweigh the benefits of this rule.

Response: DHS disagrees with the commenters' assertions that this rule will negatively impact U.S. industries, U.S. citizens, and young Americans. As explained in the other responses throughout this rule, the weighted selection process would likely have little effect on certain occupations, such as professors and doctors, since these occupations are usually cap-exempt or have other immigration pathways for employment in the United States (such as J-1 or the Conrad 30 program for doctors). Regarding small and mid-size companies and startups, these employers will be treated the same as all other employers and have the option to pay any highly sought after beneficiary a higher wage for a better chance at selection. As for opportunities for U.S. citizens, DHS disagrees that they will see fewer employment opportunities at research labs if these labs are not able to hire as many international workers. Rather, DHS anticipates that if these

companies hire fewer international workers, they may look to fill such roles with U.S. workers, thereby improving job prospects for U.S. workers.

With respect to the commenter's assertion that the asserted economic costs of the rule outweigh the benefits, DHS disagrees with this commenter. The commenter did not provide data to support the claimed costs of this rule on the U.S. economy. In addition, this commenter did not consider the costs to U.S. workers who have been displaced or denied employment opportunities, or whose wages have been suppressed, due to the abuse of the H-1B program. Incentivizing employers to proffer higher wages to aliens seeking H-1B status to increase their chance of selection would indirectly benefit the wages, working conditions, and job opportunities of U.S. workers and mitigate the claimed costs to the U.S. economy that the commenter described.

Comment: Some commenters warned that the proposed rule would create artificial wage inflation, which harms U.S. workers. The commenters claimed that the rule would encourage employers to inflate wages and overpay foreign workers compared to U.S. workers, creating inequity for U.S. workers performing the same work who are paid less.

Response: This rule does not mandate what wages employers must pay their employees and does not mandate employers to pay more for their H-1B workers. Rather, this rule fills in a statutory gap regarding how to administer the H-1B numerical allocations in years of excess demand and does so in a manner that will incentivize employers to employ highly paid, highly skilled workers. Rather than overpaying foreign workers as compared to U.S. workers, DHS believes that U.S. employers that might have petitioned for cap-subject H-1B workers to fill relatively lower-paid, lower-skilled positions may be incentivized to hire available and qualified U.S. workers for those positions. DHS also believes that an employer who offers a higher wage than required by

the prevailing wage level only would do so if it was in their economic interest to do so based on the beneficiary's skill level and relative value to the employer.

Comment: Many commenters said that the proposed rule would negatively affect the United States' ability to compete for global talent. A commenter said that America's competitors focus on attracting young talent and the proposed rule would limit the United States' ability to do the same. Several commenters stated that the proposed rule may cause a "brain drain" or "talent migration" away from the United States, including from certain industries. Some commenters expressed concern that the proposed rule, when viewed alongside other recent immigration policy changes, will negatively impact U.S. companies' ability to access, retain, and move talent needed for global competition, which they said will diminish the country's economic security, contrary to DHS's statutory mission under the Homeland Security Act. Some commenters said that the proposed rule could lead companies to deprioritize roles in key fields, such as STEM and AI research.

Response: DHS does not agree that this rule will weaken America's competitiveness, harm innovation and entrepreneurship, or lead to "brain drain." On the contrary, DHS believes this rule will strengthen America's competitiveness and innovation by incentivizing and facilitating the admission and retention of higher-paid, higher-skilled foreign workers, including those in key fields, such as STEM and AI research. Under this rule, U.S. employers will have increased access to more talented, higher-paid foreign workers, thus increasing innovation and productivity for these employers and contributing to American competitiveness.

DHS disagrees with the claims that this rule will diminish the country's economic security and is contrary to DHS's statutory mission under the Homeland Security Act. As already discussed earlier in this preamble, the large-scale replacement of U.S. workers through systemic abuse of the program has undermined both the United States' economic

and national security. By addressing these abuses, this rule supports the nation's economic and national security and is consistent with DHS's statutory mission under the Homeland Security Act to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland." HSA sec. 101(b)(1)(F), 6 U.S.C. 111(b)(1)(F).

4. Negative Impacts on National Security

Comment: Some commenters expressed opposition to the proposed rule on the basis of national security and strategic interests. A commenter stated that international students account for over half of graduate enrollments in computer science and engineering in U.S. universities, fields that directly contribute to advances in AI, cybersecurity, biotechnology, and semiconductor design—all areas identified by the Departments of War and Commerce as critical to U.S. national security and economic resilience. Other commenters stated that the proposed rule will undermine the global competitiveness of U.S. businesses and negatively impact the overall economic security of the United States. One commenter said that international students in key technical and scientific fields at U.S. universities will be more likely to find post-graduate employment outside the United States if this rule is passed, noting that "competitor countries that recognize the value of attracting these highly sought-after professionals are strengthening their analogous programs." Another commenter similarly emphasized the importance of retaining foreign students that pursue in-demand degrees at U.S. universities, asserting that it is in the national interest that foreign students completing U.S. graduate degrees apply their skills to advancing U.S. interests, rather than seeking opportunities in their home country or another country with more flexible early-career immigration pathways.

Response: DHS does not believe this rule will disadvantage prospective beneficiaries contributing to advancements that strengthen national security or innovation in critical sectors, and the commenters have not provided evidence that this is likely to

occur. A general correlation between degrees obtained by international students and fields that contribute to national security does not demonstrate that this rule will negatively impact critical industries or undermine national security. Rather, DHS believes this rule will incentivize employers to proffer higher wages, or to petition for positions requiring higher skills and higher-skilled aliens that are commensurate with higher wage levels, thereby attracting the best and the brightest employees and promoting advancements and innovation across all industries, including those that are important to national security.

Further, as noted in the H-1B Proclamation, abuses of the H-1B program present a national security threat by discouraging Americans from pursuing careers in science and technology, risking American leadership in these fields. 90 FR 46027 (Sept. 24, 2025). This rule will help reverse this trend of abuse and help strengthen national security.

5. Negative Impacts on Entry-Level Workers and Recent Graduates

Comment: Many commenters expressed concern that the proposed weighted selection process would disproportionately disadvantage recent graduates and entry-level workers, reducing or eliminating their chance of selection. One commenter said that the proposed weighted selection process will penalize early-career, U.S.-educated international talent because the wage levels measure seniority within an occupation and most international students are hired at level I or level II wages, and provided an analysis to support this contention.[23] Commenters remarked that most new graduates typically start their careers at level I wages due to their limited work experience, but many soon become valuable contributors and leaders and the rule would harm these graduates' ability to be employed, undermine the "education-to-employment pipeline," and harm companies' ability to attract qualified talent in the future. Similarly, some commenters

[23] Jeremy Neufeld, The 'Wage Level' Mirage: How DHS's H-1B Proposal Could Help Outsourcers and Hurt U.S.-Trained Talent, Inst. for Progress (Sept. 24, 2025), https://ifp.org/the-wage-level-mirage/.

remarked that talent or value is not always correlated with wage level or years of experience, but the proposed rule would create a system that rewards seniority or wage level rather than merit, pushing out the next generation of early-career innovators and harming the companies that employ them. One commenter stated it does not make sense to prioritize older, higher-paid workers who have fewer years left in their career. Commenters also noted that international graduates already have difficulty securing an entry-level role due to lack of U.S. work experience, and the proposed rule would present an additional challenge that is unfair for aliens who had studied in the United States legally and would limit career opportunities for these aliens.

Other commenters wrote that entry-level positions are important and legitimate roles, not examples of program abuse, and represent the natural starting point for professional growth. Commenters reasoned that "blocking" level I beneficiaries from the H-1B program undermines upward mobility and creates an artificial barrier to career development. Some commenters stated that under the current system, level I applicants already face low selection odds of approximately 10-15%, and the proposed weighted system would reduce these chances to "nearly zero," effectively creating what some described as a "de facto ban" on early-career professionals. One commenter said that the probability of a level I applicant being selected would be reduced by 48 percent, and another commenter said the probability of a level I or II applicant being selected could decrease to 15 percent.

Some commenters stated that while their companies' starting salaries for recent graduates are competitive, they cannot compare to big corporations that can offer high salaries. A commenter stated that certain industries generate essential public and economic benefits, but tend to pay less, which does not reflect a lack of skill or potential. Commenters said that the emphasis on wage-based selection could harm the nation's long-term interests, and that the U.S. economy benefits from attracting and retaining

individuals at all career levels. Another commenter also emphasized that wage level is not dispositive of an employee's contribution value and remarked that limiting the amount of level I and II professionals is not sound economic policy and would lead to negative impacts greater than any benefit derived from higher wages paid to level III and IV employees.

Response: DHS disagrees that this rule would be "blocking" or amount to a "de facto ban" on all entry-level workers or early-career professionals, or that their chances of selection would be "nearly zero." As stated in the NPRM, DHS recognizes the value in maintaining the opportunity for employers to secure H-1B workers at all wage levels. In this respect, this rule differs from the selection process in the 2021 H-1B Selection Final Rule, through which USCIS would have ranked and selected registrations generally based on the highest equivalent OEWS wage level that the proffered wage equaled or exceeded for the relevant SOC code and area(s) of intended employment, beginning with level IV and proceeding in descending order with levels III, II, and I. The 2021 rule was expected to result in the likelihood that registrations for level I wages would not be selected, as well as a reduced likelihood that registrations for level II would be selected. Conversely, as noted in Table 13 of the NPRM, DHS projects that through the weighted selection process implemented by this rule, those with a level I registration (or petition, as applicable) will have a 15.29-percent probability of being selected to file a cap-subject petition, and those with a level II registration (or petition, as applicable) will have an increased chance of selection as compared to the current random selection process (30.58% up from 29.59%, respectively). DHS believes commenters' claims that this rule would result in a de facto ban or block on early-career professionals are inaccurate and overstated. For instance, prior to implementation of the beneficiary-centric selection process, 780,884 total registrations for 85,000 statutorily capped H-1B visas allocated randomly in cap fiscal year 2024 yielded a mere 10.9-percent probability that a foreign

student educated in the United States would ultimately be able to obtain an H-1B cap-subject visa.[24]

DHS acknowledges that, under this rule, in years of excess demand, relatively lower-paid or lower-skilled positions will have a reduced chance of selection. However, this rule maintains the opportunity for employers to secure H-1B workers at all levels, including recent graduates or those who are just starting out in their professions. Additionally, if an employer chooses to offer a recent foreign graduate a wage that equals or exceeds a particular wage level, the registration will be weighted accordingly, regardless of the beneficiary's experience level or the requirements of the position. In fact, this rule will benefit talented international graduates who are offered wages at higher levels, as they will have a higher chance of selection compared to the current random selection process. DHS notes that this rule does not require any employer to offer higher wages. Rational employers will not offer wages exceeding the expected value of the employee's work. To the extent an employer chooses to offer a higher wage, they are doing so because that higher wage is a clear reflection of the beneficiary's value to the employer.

With respect to the analysis provided by a commenter about the "wage level mirage," this article appears to misunderstand the nature of the weighted selection process. The weighting process is generally based on the beneficiary's *equivalent* wage level, that is, the highest wage level that the proffered salary would equal or exceed. The weighting process specifically allows for consideration of the proffered salary. Thus, even if a job offer would otherwise be classified as level I under the OEWS wage level structure for Labor Condition Application (LCA) purposes based on the requirements of the position, the beneficiary could still be assigned to a higher equivalent wage level

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[24] *See* Historical Data Table from USCIS H-1B Electronic Registration Process at https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/h-1b-electronic-registration-process (last updated July 18, 2025).

based on a high salary for registration purposes. Furthermore, the analysis grouped firms that registered more than 2,000 H-1Bs in FYs 2021, 2022, 2023, or 2024 together as "outsourcers" to argue that "other companies" with fewer than 2,000 registrations are disadvantaged by this rule because they generally register more level I positions despite paying generally higher salaries. This overlooks the direct impact of the rule on lottery outcomes of those employers of more than 2,000 H-1Bs who, like all other companies, will see fewer level I registrations selected and more level II, III and IV registrations selected. The comment presents no evidence that these "outsourcers" are more likely to register positions for workers educated outside the United States and neither the comment nor analysis acknowledges that the referenced cap fiscal years 2021–2024 saw exponential growth of eligible registrations for beneficiaries with multiple eligible registrations. Thus, DHS does not find this analysis persuasive.

To the extent that this rule may disadvantage recent graduates and entry level alien workers seeking positions corresponding to a lower wage level, these positions may instead be made available to U.S. graduates and workers starting out in their careers. This result would be consistent with the purpose of the H-1B program, which is to help employers fill labor shortages with highly skilled workers, rather than as a program for employers to use to replace U.S. workers with lower-paid, lower-skilled labor. As noted in the H-1B Proclamation, exploitation of the H-1B program to replace, rather than supplement, U.S. workers with lower-paid, lower-skilled labor has resulted in a disadvantageous labor market for U.S. citizens and especially for U.S. college graduates who are facing higher unemployment rates.[25] 90 FR 46027 (Sept. 24, 2025).

Lastly, DHS disagrees that the rule is not sound economic policy. This rule will help the United States attract the best and brightest workers by increasing the chance of

[25] Federal Reserve Bank of New York, The Labor Market for Recent College Graduates, https://nyfed.org/collegelabor (last updated Aug. 1, 2025) (data from 2023).

selection for highly skilled, highly paid aliens who are more likely to make significant contributions to their employers and industry, while also better protecting the wages, working conditions, and job opportunities of U.S. workers.

Comment: Some commenters stated that this rule would make it more difficult for foreign students, recent graduates, trainees, postdoctoral fellows, and specialists seeking to transition from F-1 to H-1B status through Optional Practical Training (OPT) or STEM OPT extensions so that they can enter the workforce and launch their professional careers. Some commenters stated the proposed rule would limit career paths available in the United States for recent graduates and early-career professionals and would disrupt the F-1 to H-1B pipeline, potentially causing employers to stop hiring students and terminate OPT participants. A commenter remarked that the uncertainty of H-1B selection is already a source of instability for these individuals and their employers, and the proposed weighted selection process would further disadvantage those in entry-level and research positions. A different commenter noted that OPT is a temporary transitional program and should not be viewed as guaranteed employment for international students, and without a bridge to H-1B status, international students would be "forced to leave" the United States despite years of education and contribution. Another commenter noted that this rule likewise negatively impacts companies who are already employing aliens as part of the F-1 program, but will not be able to transition them to the H-1B program. At least one commenter cited an analysis that found that the proposed selection process would reduce H-1B visas awarded to F-1 graduates by 7 percent despite these graduates earning higher salaries on average than other H-1B workers.[26]

Response: DHS disagrees. This rule will not preclude F-1 students in the United States from transitioning from OPT to employment under the H-1B visa or "force" such

[26] For the survey cited by the commenters, see Jeremy Neufeld, The 'Wage Level' Mirage: How DHS's H-1B Proposal Could Help Outsourcers and Hurt U.S.-Trained Talent, Inst. for Progress (Sept. 24, 2025), https://ifp.org/the-wage-level-mirage/.

students to leave. As stated in the NPRM, DHS recognizes the value in maintaining the opportunity for employers to secure H-1B workers at all wage levels, including those employers seeking to hire workers in F-1 status. While this rule generally may reduce the chance of selection for relatively lower-paid or lower-skilled positions, it does not create a barrier to being selected in the H-1B lottery.

Further, this rule has no impact on OPT. To the extent that F-1 students are talented and obtain job offers corresponding to high wage levels, this rule may facilitate their ability to transition to the H-1B program.

DHS disagrees with the analysis cited by some commenters about the impact on international students because this article misunderstands the nature of the weighted selection process that generally weights registrations (or petitions, if applicable) based on the highest wage level that the proffered wage will equal or exceed. For example, one commenter cites to data showing that "F-1 students entering the H-1B process earned higher salaries on average than non-F-1 workers, but they were far more likely to be placed at the lowest Wage Levels."[27] Under the weighted process finalized by this rule, F-1 students who earn relatively high salaries may be ranked at higher wage levels (the wage level that their proffered wage equals or exceeds, if OEWS wage level data is available for that occupation and area of employment) and would not be constrained to the "lowest wage levels" for registration purposes.

Finally, to the extent that this rule does make it more difficult for some F-1 students seeking lower-skilled, lower-paid positions to transition to an H-1B visa, it is important to note that the purpose of the H-1B visa program is not to serve as an early career transition program for foreign students. Instead, the H-1B program was created to help U.S. employers fill labor shortages in positions requiring highly skilled or highly

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[27] *See* Jeremy Neufeld, "The 'Wage Level' Mirage: How DHS's H-1B Proposal Could Help Outsourcers and Hurt U.S.-Trained Talent," Inst. for Progress (Sept. 24, 2025), https://ifp.org/the-wage-level-mirage/.

educated workers while protecting the wages, working conditions, and job opportunities of U.S. workers. The entry-level or other lower-skilled, lower-paid positions that these F-1 students may have filled could instead be made available to American students and recent graduates. DHS believes that this rule appropriately balances the interests of U.S. workers with the interests of petitioning employers and the alien workers they seek to employ as H-1B nonimmigrants.

6. Negative Impacts on Mid-Level Workers

Comment: In addition to negatively impacting entry-level professionals, some commenters claimed that this rule would also negatively impact mid-level professionals seeking H-1B visas or status. For instance, a commenter claimed that a mid-wage level employee would be disadvantaged by this rule because they would have a lower chance of selection. A commenter provided an example of a level II professional who is "uniquely qualified to lead a critical project involving cutting-edge technology" and claimed that the level II wage does not diminish the employee's value. The commenter concluded that "limiting employers' access to foreign talent at the two lower levels is not sound economic policy."

Response: DHS disagrees with the assertion that the rule would disadvantage mid-level professionals earning wages corresponding to wage levels II and III. Under the weighted selection process, level II and level III registrations or petitions will still have a reasonable chance of selection, as outlined in the NPRM. Specifically, as noted in Table 13 of the NPRM, DHS projects that these groups will have an increased probability of selection compared to the current random selection process, with the probability of selection increasing by 3 percent for level II and by 55 percent for level III. As noted previously, the weighted selection process is designed to incentivize employers to offer higher wages, which generally correlate with higher skill levels, while maintaining opportunities for employers to secure H-1B workers at all wage levels. This approach

strikes a balance between prioritizing highly skilled and highly paid workers and preserving access to foreign talent across all wage levels.

Comment: A commenter claimed that the proposed rule makes it more likely that U.S. companies could shift their talent acquisition policy to favor foreign mid-career to senior-level professionals rather than focusing on hiring recent international graduates from U.S. universities.

Response: As noted, the goal of this rule is to incentivize employers to offer higher wages, or to petition for positions requiring higher skills and higher-skilled aliens, that are commensurate with higher wage levels. A U.S. company shifting their talent acquisition policy to use the H-1B program only for higher-skilled aliens more advanced in their careers aligns with that goal. If a U.S. company wishes to focus its talent acquisition policies on hiring recent graduates, it may focus its search among American graduates.

7. Negative Impacts on International Students

Comment: Many commenters expressed concern about the negative impact the proposed rule would have on international students who are studying at U.S. universities. Commenters stated that these students invest significant time and financial resources to obtain U.S. degrees, often paying substantially higher tuition than domestic students. Some commenters stated that the proposed rule would make it more difficult for these students to secure employment in the United States after graduation, effectively wasting their investment in U.S. education or sending the message that their investment and contributions mean little if they are not also high earners. Another commenter remarked on the many benefits that recent graduates bring, which help global companies.

Many commenters stated that the proposed rule may cause international graduates who studied in the United States to relocate to other countries that actively welcome skilled workers, ultimately harming the U.S. economy and innovation. Some commenters

remarked that this rule sends a discouraging signal to prospective international students, who may choose to study in other countries with clearer pathways to employment and immigration. Some commenters noted that because the rule applies to the 20,000 advanced degree exemption, it will deprive the workforce of graduates in high-demand fields.

Another commenter said that tighter H-1B policies will cause the academic profile of international applicants to U.S. schools to worsen, in that the best students are the ones most likely to be discouraged from coming to the United States. This commenter also noted that despite being disproportionately at relatively low wage levels, international students currently appear to have higher average salaries than other H-1B visa holders. The commenter noted that the difference reflects, at least in part, the concentration of petitions for international students in relatively high-wage occupations and areas.

Response: DHS disagrees that this rule will significantly harm international students. First, this rule will not impact the ability of international students to study in the United States, which is the basis of their admission to the United States in student status. While the prospect of future H-1B employment may be a factor in deciding whether to study in the United States, the reputation of the academic institutions themselves is also an important factor for students choosing to study in the United States. DHS also disagrees that this rule will worsen the profile of international students. Conversely, DHS believes this rule will help attract the best and brightest international students, to the extent that they will earn relatively high wages, as they will see their chances of being selected in the H-1B lottery increase compared to the current random selection process. As a commenter pointed out, international students appear to have higher average salaries than other H-1B nonimmigrants, which seems to suggest that international students will generally benefit from this rule, contrary to the commenter's claims.

DHS disagrees that this rule will lead U.S.-educated international students to relocate to other countries. On the contrary, DHS believes this rule will incentivize and facilitate the admission and retention of the best and brightest international students. Facilitating the admission of higher-skilled foreign workers, as indicated by their earning of wages that equal or exceed higher prevailing wage levels, will increase the United States' competitive edge in attracting the "best and the brightest" students in the global labor market, consistent with the goals of the H-1B program. DHS also reiterates that recent graduates with master's or higher degrees from U.S. institutions of higher education already benefit from the existing advanced degree exemption and cap selection order.

Comment: Some commenters stated that the proposed rule would discourage foreign students from studying in the United States, citing a survey of international graduate students in the United States conducted by the Institute for Progress and National Association of Foreign Student Advisers (NAFSA): Association of International Educators.[28] Specifically, commenters cited the survey results finding that 53 percent of international graduate student respondents would not have enrolled in U.S. universities if "access to H-1B visas was determined by wage levels." The same survey also found that 48 percent of master's students, 52 percent of Ph.D. students, and 38 percent of postdoctoral respondents, who said they are currently likely to try to obtain another visa under current rules, would not do so if access to H-1B visas was determined by wage levels.

Response: DHS reviewed the survey results and does not find them convincing.[29] In pertinent part, the survey concluded that "53% of respondents said they would not

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[28] The commenters cited the September 15, 2025, survey, "Surveys on International Talent Pipeline" conducted by the Institute for Progress and NAFSA: Association of International Educators.

[29] DHS reviewed the survey results available at Institute for Progress and NAFSA: Association of International Educators, Surveys on International Talent Pipelines (Sept. 15, 2025), https://ifp.org/wp-content/uploads/2025-Surveys-on-International-Talent-Pipelines-1.pdf.

have enrolled in the first place if access to H-1B was determined by Wage Levels." However, this rule will not result in "access to H-1B [being] determined by Wage Levels." Again, this final weighted selection process will maintain the opportunity for employers to secure H-1B workers at all wage levels and thus does not preclude "access" to the H-1B program. While selection will be weighted generally based on corresponding wage level, it will not be "determined" by wage levels. This final rule also does not affect H-1B petitioners who are exempt from the H-1B cap. Similarly, the relevant survey question asked: "Think back to your decision to enroll in a US program. If eligibility to work for a for-profit employer after graduation were out of reach unless you are compensated at the highest levels and above the median wage for all Americans working in your occupation, including those most experienced, how likely would you have been to enroll in a degree-granting program in the US?" The survey question itself was inaccurate. This wage-based selection rule does not impact eligibility for H-1B classification. It also does not make selection in the H-1B registration "out of reach" as this rule does not create a barrier to getting an entry level job and being selected in the registration.

Comment: Some commenters discussed how the proposed rule would have a negative impact on businesses supported by foreign students and faculty who provide important economic contributions. Some commenters pointed to data indicating that international students contribute billions to the U.S. economy through direct spending and support hundreds of thousands of jobs, stating the rule would be a setback for those contributions. Some commenters similarly remarked that lower enrollment of foreign students would mean losing the boost to local economic activity and jobs that they bring, and would have "ripple" or "cascading" effects on businesses that support colleges and universities, including service providers, such as restaurants and retail stores. One such commenter cited Institute of International Education (IIE) Open Doors data estimating

the contribution of foreign students to the United States economy to be $44.7 billion from 2018–2019. Another commenter suggested that in 2026, a 40 percent plunge to approximately 657,000 students would eviscerate $17.5 billion and 151,000 jobs. A different commenter similarly expressed that NAFSA reports that international students contribute $43.8 billion to the U.S. economy and create or support 378,175 jobs.

A commenter said that new international graduates also support the local economies by paying rent, shopping in local stores, and volunteering. A different commenter remarked that the proposed rule will remove the ability of international graduates of U.S. universities to transition into the workforce, and asserted that the resulting loss in innovation output, startup formation, and tax generation would be staggering. The commenter suggested that the cumulative impact could exceed $1–2 trillion in lost economic productivity. The commenter expressed that declining international enrollment would create a chain reaction, causing a collapse in university revenues, layoffs and program closures, local economic contraction, reduced tax bases, and weakened national competitiveness. Some commenters stated that new international graduates often are employed outside of major metropolitan areas, and that businesses in these areas rely on new graduates to support development, technical workflows, and business growth. Some commenters remarked that concentrating international students in major cities would strain infrastructure and increase housing costs.

Response: DHS disagrees with these commenters. Since this rule does not impact the ability of international students to study in the United States, it does not take away the economic and other benefits these international students provide for their local economies and communities. In addition, DHS disagrees that this rule removes the ability of international graduates to enter the workforce. While this rule may disadvantage some recent graduates to the extent that they have job offers with salaries at relatively lower wage levels, this rule does not prevent recent graduates on F-1 status from transitioning

to H-1B status. Rather, the rule will generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens while maintaining the opportunity for employers to secure H-1B workers at all wage levels, without disadvantaging employment opportunities for recent American graduates in the same or similar fields.

Further, this rule will facilitate the admission of higher-skilled workers. Facilitating the admission of higher-skilled foreign workers, as indicated by their earning of wages that equal or exceed higher prevailing wage levels, is expected to increase the United States' competitive edge in attracting the "best and the brightest" in the global labor market and benefit the economy. H-1B workers earning higher wages as a direct result of this rule are likely to increase, not decrease, many of the economic impacts that were described by commenters, such as housing or shopping in local stores.

Comments citing Open Doors data and NAFSA analysis provided no evidence or rationale for their own beliefs that the rule would result in reduced enrollment and dire cascading effects. DHS again emphasizes that the weighted-selection mechanism preserves the possibility that level I registrations will be selected. Open Doors' data on enrollment trends show total number of international students has grown every year since 2004/2005 with the exception of temporary declines in 2019/2020 and 2020/2021 due to COVID-19.[30] DHS notes that this growth in international students occurred despite decades of generally diminishing probability of obtaining an H-1B cap-subject visa.[31] Open Doors data affirm international students' motivations for studying in the United

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[30] *See* IIE Open Doors, International Students, Enrollment Trends https://opendoorsdata.org/data/international-students/enrollment-trends/ (last visited Nov. 24, 2025).

[31] In general, the number of H-1B cap-subject petitions received in the years before registration, and the number of registrations submitted in the years before the beneficiary centric selection process, has trended upwards each year whereas the statutory cap has remained the same at 85,000 per year. *See, e.g.,* USCIS, H-1B Registration Process (last updated July 18, 2025), https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/h-1b-electronic-registration-process (showing the increasing number of registrations from cap years FY2021 through FY2024 prior to the beneficiary centric process); "Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens" 84 FR 888, 928 (Jan. 31, 2019) (table 6 showing the generally increasing numbers of H-1B cap-subject petitions received from cap years FY2013 through FY2017).

States are complex and unlikely to exhibit the sensitivity commenters speculated would lead to a collapse of this talent and innovation pipeline.[32]

8. Negative Impacts on STEM Fields

Comment: Multiple commenters remarked on negative impacts on international graduates and workers with degrees in STEM fields as well as on their employers that depend on them. Many commenters remarked that recent graduates often bring the most current knowledge in rapidly evolving fields like AI, clean energy, climate science, public health, machine learning, semiconductors, bioinformatics, and biotechnology, and that they play indispensable roles on their teams. Commenters stated that the rule would lock out entry-level STEM graduates trained in U.S. universities, wasting U.S. educational investment, and preventing those graduates from contributing to the U.S. economy. Commenters remarked that the United States competes for a global talent pipeline, especially in areas, such as STEM, biotechnology, AI, data infrastructure, cybersecurity, semiconductors, quantum computing, advanced manufacturing, and healthcare, and that this rule would undermine the talent pipeline in these fields. A commenter cited data that foreign nationals comprise a significant percentage of U.S. college graduates in STEM fields, and noted that "U.S. employers aggressively recruit the top students from U.S. colleges and universities to fill early career positions that leverage their skills." This commenter similarly concluded that the rule would erode the pipeline of "highly educated and talented professionals, of which foreign students are a critical component pipeline." Similarly, another commenter cited data showing that foreign students represent the majority of STEM masters and Ph.D. graduates in the United States, many of which are entering the labor market for the first time.

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[32] *See* Daniel Obst & Joanne Forster, IIE, Country Report: USA, Perceptions of European Higher Education in Third Countries (2007), https://www.iie.org/wp-content/uploads/2022/12/International-Students-in-the-US.pdf. Table 10 shows improving chances for an international career is a strong motivation, but not the only motivation for studying in the United States. Table 17 shows that complicated visa procedures/strict requirements were an obstacle to foreign students planning to remain in the United States, but many other obstacles are not related to an expectation of H-1B employment after college.

Commenters also specifically addressed the proposed rule's negative impact on science and technology more generally, including in AI, robotics, machine learning, quantum computing, cybersecurity, electronics design and manufacturing, semiconductor manufacturing, biotechnology, digital health, automation, and data analytics fields or industries.

The commenters expressed that their companies and industries rely on access to global talent through the H-1B program, and that they will be harmed without access to this talent. Some commenters claimed that there is not sufficient domestic talent in STEM fields, which is why they need continued access to the H-1B program. A commenter claimed that this rule would go against President Trump's efforts to increase investments in the U.S. semiconductor industry.

Response: DHS disagrees with these commenters. This rule will not preclude early-career STEM graduates from being selected in the H-1B lottery. While this rule generally may reduce the chance of selection for an early-career STEM graduate who is relatively lower-paid, it does not create a barrier to getting an entry level job and being selected in the H-1B cap selection process. Additionally, this rule incentivizes employers to offer a wage that equals or exceeds a higher wage level for a beneficiary with desirable skills, regardless of the beneficiary's experience level or the requirements of the position, in order to increase a beneficiary's chance of selection in the H-1B lottery. Thus, contrary to commenters' claims, DHS believes this rule will facilitate the admission and retention of the best and brightest international students and enhance the talent pipeline in STEM fields.

To the extent that this rule will disincentivize U.S. companies to hire fewer low-skilled, low-wage foreign STEM workers, DHS views this as an overall benefit to U.S. workers. First, these companies could instead be incentivized to hire qualified U.S. workers to fill STEM positions, including those U.S. workers who have STEM degrees

but are currently unemployed or underemployed.[33] As highlighted in the H-1B Proclamation, a recent study indicated that in 2023, unemployment among recent computer science and computer engineering graduates was high as compared to graduates with other majors.[34] 90 FR 46027 (Sept. 24, 2025). Notably, the abuse of the H-1B visa program has made it even more challenging for college graduates trying to find IT jobs, allowing employers to hire foreign workers at a significant discount to U.S. workers. 90 FR 46027 (Sept. 24, 2025). Observers have written that there are plenty of qualified U.S. workers with STEM degrees or pursuing such degrees who are seeking employment in these fields.[35]

Second, companies that have historically relied on a steady pool of lower-skilled, lower-wage foreign STEM workers could instead be incentivized to hire highly skilled foreign workers who would be more likely to supplement, rather than replace, U.S. workers. Many of these companies are the same companies that have laid off their U.S. workers and replaced them with low-paid H-1B workers. Again, as highlighted in the H-1B Proclamation, reports indicate that many U.S. tech companies have laid off their qualified and highly skilled U.S. workers and simultaneously hired thousands of H-1B

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[33] *See, e.g.,* Adam Hardy, Money, Recent College Grads are Discovering That a STEM Degree Doesn't Guarantee a Stable Job (May 30, 2025), https://money.com/college-grads-stem-degrees-unemployed/ (citing data from the Federal Reserve Bank of New York and separate data from the National Association of Colleges and Employers (NACE) reflecting declining career prospects for U.S. graduates with bachelor's degrees in certain STEM majors, including computer/information sciences and mathematics/statistics); Andrew Mark Miller, Fox News, '3 headed monster': Expert reveals how H-1B visa program is crushing American college graduates (Oct. 27, 2025), https://www.foxnews.com/politics/expert-reveals-3-headed-monster-crushing-american-college-graduates-as-trump-makes-strikes-on-h1b-visas ("unemployment rate for college graduates with those degrees is significantly higher than the average for all college graduates and there is a "concerning" level of unemployment with college graduates in IT.").

[34] Federal Reserve Bank of New York, The Labor Market for Recent College Graduates, https://nyfed.org/collegelabor (last updated Aug. 1, 2025) (data from 2023).

[35] *See, e.g.,* Ron Hira, Is There Really a STEM Workforce Shortage? Issues in Science and Technology (Summer 2022), https://issues.org/stem-workforce-shortage-data-hira/ (Unemployment rates for computer occupations indicates that "there are too many educated, experienced STEM workers who are trying to find a job; there is not a shortage of them."); Rachel Rosenthal, Bloomberg, Tech Companies Want You to Believe America Has a Skills Gap But what they really want is a steady supply of cheap, dependent IT workers (Aug. 4, 2020), https://www.bloomberg.com/opinion/articles/2020-08-04/big-tech-wants-you-to-believe-america-has-a-skills-gap ("The IT industry is 'awash with supply' and citing data that "U.S. students are both interested and capable of doing this kind of work"); Steven Camarota, Center for Immigration Studies, New data show no STEM worker shortage (Sept. 17, 2024), https://cis.org/Oped/New-data-show-no-STEM-worker-shortage.

workers.[36] 90 FR 46027 (Sept. 24, 2025). Information technology firms, in particular, have prominently manipulated the H-1B system, significantly harming U.S. workers in computer-related fields. The high numbers of relatively low-wage workers in the H-1B program undercut the integrity of the program and are detrimental to U.S. workers' wages and labor opportunities, especially at the entry level, in industries where such low-paid H-1B workers are concentrated. In fact, workers in computer related fields have seen virtually no real wage growth in decades; and real wages for all types of engineers as well as several other STEM occupations, including software developers, have stagnated or even declined in the past decades.[37]

9. Negative Impacts on Academic Institutions

Comment: Some commenters expressed concern that the proposed weighted H-1B selection process would negatively impact U.S. universities and higher education institutions. Commenters stated that the rule would reduce the attractiveness of U.S. universities for international students and undermine the competitiveness of U.S. higher educational institutions. Commenters stated that international students provide essential tuition revenue for U.S. universities, which this rule would threaten. At least one commenter claimed that international students essentially subsidize domestic students at U.S. colleges and universities, making it cheaper for U.S.-born students to receive higher

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[36] *See, e.g.*, Crunchbase, The Crunchbase Tech Layoffs Tracker (last updated Nov. 19, 2025), https://news.crunchbase.com/startups/tech-layoffs/; Daniel Costa & Ron Hira, Tech and outsourcing companies continue to exploit the H-1B visa program at a time of mass layoffs (Apr. 11, 2023), 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/; Reuters, Lawmakers seek answers from major US firms over H-1B visa use amid layoffs (Sept. 25, 2025), https://www.reuters.com/business/finance/us-lawmakers-scrutinize-tech-firms-over-h-1b-visa-use-amid-other-job-layoffs-wsj-2025-09-25/.

[37] *See, e.g.*, Ron Hira, Is There Really a STEM Workforce Shortage? Issues in Science and Technology, (Summer 2022), https://issues.org/stem-workforce-shortage-data-hira/ ("After accounting for inflation, real wage growth was minimal or negative: real wages for computer and mathematical occupations declined by 0.4% over the five-year period [between 2016 and 2021]."); Hal Salzman, Daniel Kuehn, & B. Lindsay Lowell, Economic Policy Institute, Guestworkers in the high-skill U.S. labor market (Apr. 24, 2013), https://www.epi.org/publication/bp359-guestworkers-high-skill-labor-market-analysis/ ("Wages have remained flat, with real wages hovering around their late 1990s levels" and concluding that "the United States has more than a sufficient supply of workers available to work in STEM occupations.").

education and cushioning public universities' budgets in the face of declining state appropriations. Some commenters acknowledged that U.S. institutions of higher education are exempt from the H-1B cap, but that the proposed changes to the H-1B selection process would still have negative, and potentially long-term, effects on U.S. higher education. A commenter mentioned that the U.S. higher education system would be destabilized by the proposed rule as it recovers from low enrollment and financial strain due to the Coronavirus Disease of 2019 (COVID-19) pandemic. Commenters also noted that international students provide other types of benefits to educational institutions and their surrounding communities, including exposure to new ideas and cultures.

A commenter referenced a survey conducted by NAFSA estimating a possible 30 to 40 percent drop in foreign student enrollment for the 2025–2026 academic year, which could have a significant impact on the U.S. economy.

Response: DHS does not believe that this rule will have a significant negative impact on the ability of U.S. colleges and universities to recruit talented international students. To the contrary, DHS believes this rule is more likely to enhance an academic institution's ability to attract the best and brightest international students through offering them an increased chance of H-1B employment if they secure a job offer at a salary that corresponds to a higher wage level. To the extent that this change will negatively affect the ability of some colleges and universities to recruit lower-skilled or less-experienced international students, DHS believes that any such harm will be outweighed by the benefits of better ensuring that initial H-1B visas and status grants would more likely go to higher-paid, higher-skilled beneficiaries. Facilitating the admission of higher-skilled foreign workers, as indicated by their earning of wages that equal or exceed higher prevailing wage levels, would benefit the economy and increase the United States' competitive edge in attracting the "best and the brightest" in the global labor market, consistent with the goals of the H-1B program discussed in the NPRM. Concerning the

survey the commenter referenced, the commenter did not indicate that there was a correlation between the potential change in international student enrollment and this rule.[38] Further, DHS expects this rule to have a positive effect on the economy, which could counteract any negative economic effects caused by a potential drop in enrollment. Regarding the cultural benefits that international students provide, DHS reiterates that this rule will not ban international students from coming to or remaining in the United States, so this aspect is unlikely to be affected.

Comment: Commenters remarked that this rule would negatively impact U.S. universities to attract the best students because many students select the United States for the opportunity to work in the United States following graduation. Some of these commenters specifically addressed the OPT program and the possibility of F-1 students transitioning to an H-1B visa. The commenters stated that this rule risks deterring international students who wish to study in the United States specifically because of the prospect of OPT employment. Some commenters stated that the proposed rule would create a policy contradiction: the government issues student visas, allows OPT, and promotes U.S. degrees as a pathway to opportunity, but then erects a barrier to getting the first job.

Response: DHS does not believe that this rule creates a policy contradiction or threatens the pipeline of students who wish to study in the United States. This rule will not impact the ability of international students to study in the United States, which is the basis of their admission to the United States in F-1 nonimmigrant status. Further, this rule has no impact on OPT. While this rule generally may reduce the chance of selection for relatively lower-paid or lower-skilled positions, it does not create a barrier to getting a

[38] The commenter cited to a Fall 2025 International Student Enrollment Outlook and Economic Impact survey conducted by NAFSA: Association of International Educators (Aug. 8, 2025), https://www.nafsa.org/fall-2025-international-student-enrollment-outlook-and-economic-impact. DHS reviewed the survey. The survey listed four factors as driving the claimed decline in international student enrollment: visa interview suspension, limited appointment availability, visa issuance trends, and visa bans. All four factors specifically relate to visa issues, not the H-1B registration process.

job on OPT or transitioning to H-1B nonimmigrant status. Rather, as explained previously, for international students who are offered jobs with a salary that corresponds to a higher wage level, this rule increases their chance for selection in the H-1B cap selection process as compared to their chances in the current random selection process.

Comment: Some commenters opposed the proposal because they reasoned it would harm research, stating that universities and research labs depend on international students and graduates. For instance, a commenter stated that entry-level graduates are essential to the future of the U.S. workforce as they often work in research labs, develop new technologies, and fill important roles. Another commenter said master's and Ph.D. graduates perform a disproportionate share of research labor and contribute to Federal grant deliverables, and denying them equitable access to H-1B visas reduces the return on public and private educational spending. A different commenter noted that research labs depend on international workers, and that if research labs cannot obtain the foreign workers they need, then this rule could also harm U.S. students who wish to work in research labs after graduation. Similarly, a commenter wrote that the large population of international students in STEM doctoral programs and federally funded labs generate patents, publications, and breakthroughs, significantly contributing to U.S. scientific discovery. The commenter stated discoveries in labs can emerge from researchers who begin in wage level I positions and eliminating these positions through the proposed rule would lead to fewer advancements, and reduced U.S. influence in global research.

Response: DHS disagrees with the assertions that this rule will harm research or research facilities. The weighted selection process implemented through this rule impacts the probability of selection towards the H-1B cap. H-1B petitions for aliens who are employed by, or have received offers of employment at, U.S. institutions of higher education, nonprofit entities related to or affiliated with U.S. institutions of higher education, or nonprofit research organizations or governmental research organizations are

exempt from the H-1B cap. *See* INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5). Many employers and aliens described by these commenters would be cap-exempt and therefore not impacted by this rule. In FY 2025 alone, USCIS approved over 49,000 petitions that qualified under one of these cap exemptions.[39] In the scenarios where researchers are not cap-exempt, DHS believes this rule will have a positive impact by increasing the chance of selection for highly paid, highly skilled foreign researchers and encouraging employers to hire American graduates for research positions instead of lower-paid aliens. Additionally, DHS disagrees with the concern that level I positions will be eliminated by this rule. The weighted selection implemented through this rule favors the allocation of H-1B visas to higher-skilled and higher-paid aliens while maintaining the opportunity for employers to secure H-1B workers at all wage levels.

Comment: Some commenters said the rule would decrease U.S. universities' access to or ability to recruit international faculty. One commenter asserted that wage-based weighting could exacerbate dental faculty shortages at schools accredited by the Commission on Dental Accreditation and could thereby limit access to dental education.

Response: DHS disagrees that this rule will decrease the ability of academic institutions to recruit or retain international faculty. Again, this rule will increase the chance of selection for those who will be paid a wage that corresponds to higher wage levels and thus is more likely to facilitate the selection of higher paid, higher skilled international faculty for cap-subject H-1B status.

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[39] DHS, USCIS, OPQ, CLAIMS 3 and ELIS, queried 10/2025, PAER0019172. Approvals of Petitions from Cap Exempt Employers, By Cap Exemption and New Employment and Renewal/Amendment Filings, October 2025. This data shows the following breakdown for total cap-exempt H-1B approvals in FY25: 24,835 for institutions of higher education; 19,866 for affiliated or related nonprofit entities; 5,654 for nonprofit research organizations or governmental research organizations; and 3,634 for beneficiaries employed at a qualifying cap exempt entity. This data further shows total cap-exempt approvals in the above categories as follows: 25,452 for New Employment and 23,901 for Renewals/Amendments. Some petitioners selected "Yes" on multiple questions, which is why the totals are higher than the sum of the individual categories.

Also, many petitions for U.S. universities and other academic institutions of higher learning will likely not be affected by this rule. Congress already exempted from the annual H-1B cap aliens who are employed by, or have received offers of employment at, U.S. institutions of higher education, nonprofit entities related to or affiliated with U.S. institutions of higher education, and nonprofit research organizations or government research organizations. *See* INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5). In FY 2025 alone, USCIS approved over 24,000 petitions for petitioners who were cap exempt as an institution of higher education.[40]

Comment: Some commenters expressed concern that the proposed weighted selection process would negatively impact public and private schools that are already experiencing difficulties recruiting qualified K-12 teachers in certain areas, such as STEM subjects. Some of these commenters specifically noted the difficulties faced by public schools, particularly in rural, low income, or other underserved communities. These commenters stated that the rule would harm such schools, leaving them without critical staff. Another commenter, expressing concern over the rule's impact on public schools, stated that public school districts cannot adjust salaries to compete for higher wage levels, because teacher compensation is determined by state or district salary schedules which are established through statute or collective bargaining. The commenter emphasized the importance of prioritizing all qualified educators, including those at entry or mid-career level likely to be at level I or level II wage levels.

Response: Some public schools may be exempt from the H-1B cap based on their affiliation with U.S. institutions of higher education. For those public or private schools that are not cap-exempt and are unable to proffer wages that equal or exceed prevailing wage levels with greater chances of selection, including those with compensation levels

[40] DHS, USCIS, OPQ, CLAIMS 3 and ELIS, queried 10/2025, PAER0019172. Approvals of Petitions from Cap Exempt Employers, By Cap Exemption and New Employment and Renewal/Amendment Filings, October 2025.

outside of the employer's control, they may be able to find available and qualified workers outside of the H-1B program, including U.S. workers.

10. Negative Impacts on the Healthcare Sector

Comment: Multiple commenters said the proposed rule would have a negative impact on the healthcare sector. A commenter stated that International Medical Graduates (IMGs)[41] account for significant portions of healthcare personnel, with others noting that H-1Bs are heavily utilized in the field. Some commenters stated that when hospitals face staffing shortages, in specialized areas and generally, international medical professionals help fill gaps in the workforce and that a weighted selection would limit access to qualified healthcare workers. Some commenters cited a U.S. Department of Health and Human Services statistic estimating a shortfall of around 187,000 physicians by 2037. Another commenter also noted that the proposed rule could encourage highly qualified, early-career physicians to practice in other countries. A commenter noted that international doctors were critical during COVID-19 and, without them, public health crises would be harder to manage.

Numerous commenters remarked that critical fields, such as healthcare, may offer lower starting salaries compared to other sectors and said that the proposed rule would "restrict access to international experts" who rely on H-1B visas to work in these sectors. Another commenter, expressing concern about eliminating a healthcare talent pipeline, wrote that healthcare professionals in their required training period are in level I or level II positions and that level I wages reflect the cost structure of supervised practice. Another commenter, using the healthcare industry as an example of industries whose

[41] DHS notes that some commenters use the term International Medical Graduate (IMG) when addressing this rule. DHS further notes that, as stated in a study cited by a commenter, the term IMG may refer to the location of a physician's medical school, rather than citizenship, and as such IMGs may include U.S. citizens and other aliens not seeking H-1B status. See Awad Ahmed, Wei-Ting Hwang, & Charles R. Thomas Jr, Deville C Jr., "International Medical Graduates in the US Physician Workforce and Graduate Medical Education: Current and Historical Trends," Journal of Graduate Medical Education (Apr. 1, 2018), https://jgme.kglmeridian.com/view/journals/jgme/10/2/article-p214.xml. Regardless, DHS believes responses in this rule sufficiently address commenters' concerns.

wage structures are incompatible with the proposed rule, wrote that medical residents and fellows, despite being some of the most highly educated workers in the United States, earn wages that would typically be categorized as level I, leading to a reduced probability of being granted H-1B status and an exacerbation of the physician shortage.

More than one commenter wrote that hospitals and healthcare systems cannot easily meet higher wage levels or absorb compliance costs, particularly small to mid-sized healthcare providers. Another commenter remarked that the OEWS system under the proposed rule does not reflect healthcare compensation schemes, which often use standardized pay scales determined by facility budgets and Medicare reimbursement. One commenter predicted that adoption of the final rule would lead to consolidation in the healthcare field and higher costs for patients. Another commenter suggested that non-profit hospitals, even in urban areas, would be at a disadvantage compared to for-profit corporations, creating disparities within the same city.

A commenter noted that wages for physicians vary by medical specialty. The commenter expressed concern about the impacts of the rule on primary care physicians, stating that primary care physicians' wages tend to be lower than the wages of procedure-oriented specialists. The commenter stated the rule could incentivize IMGs to apply for higher paying subspecialty positions to increase their chance of selection, which would further exacerbate shortages in lower paying specialties. The commenter stated that the rule will exacerbate shortages in nephrologists and thus lead to an increase in mortality for people burdened by kidney disease.

Similarly, another commenter expressed concern that the new rule would disproportionately disadvantage dentists serving in community health centers and public hospitals and could worsen access to dental care for vulnerable populations, including in underserved and rural areas. The commenter stated that many federally qualified health

centers that employ H-1B dentists operate on fixed budgets and cannot match salaries offered by private or technology sectors.

Response: DHS disagrees that this rule will negatively affect the healthcare sector. Many H-1B petitions for healthcare workers are cap-exempt. From FY 2020 through FY 2025, more than 94 percent of H-1B petitions approved for initial employment for physicians, surgeons, and dentists were cap-exempt and thus not subject to the H-1B cap selection process.[42] In addition, Congress has established programs meant to encourage certain recent foreign medical graduates to serve in the United States as H-1B nonimmigrants. These programs are exempt from the annual H-1B cap and unaffected by this rule. Certain J-1 exchange visitors are subject to a 2-year foreign residence requirement under INA sec. 212(e), 8 U.S.C. 1182(e), which requires them to return to their country of nationality or country of last residence for at least two years in the aggregate prior to being eligible to apply for an immigrant visa; adjustment of status; or certain nonimmigrant visas, including H-1B visas (with limited exceptions). *See* INA sec. 212(e), 8 U.S.C. 1182(e); INA sec. 248, 8 U.S.C. 1258. However, INA sec. 214(l), 8 U.S.C. 1184(l), contains provisions authorizing waivers of the 2-year foreign residence requirement for certain aliens, including foreign medical graduates who agree to work full-time (at least 40 hours per week) in H-1B classification for not less than three years in a shortage area designated by the U.S. Department of Health and Human Services (HHS) with a request from an interested Federal Government agency or state agency of public health or its equivalent, or with the U.S. Department of Veterans Affairs. *See* INA sec. 214(l), 8 U.S.C. 1184(l). *See also* 8 CFR 212.7(c)(9). The petition requesting a

[42] DHS, USCIS, OPQ, Approvals for New Employment with a DOT Code of 070, 071, 072 Listed by Whether Cap Exempt, Receipt Fiscal year 2020 through 2025. CLAIMS3, ELIS, queried 10/2025, PAER0019171, showing that, from FY 2020 through FY 2025, on average more than 94 percent of H-1B petitions approved for initial employment for physicians, surgeons, and dentists were cap-exempt and not subject to the H-1B cap selection process). *See also* 86 FR 1676, 1682 (Jan. 8, 2021) ("Importantly, according to DHS data, in FY 2019, more than 93 percent of H-1B petitions approved for initial employment for physicians, surgeons, and dentists were cap-exempt and thus not subject to the H-1B cap selection process.").

change to H-1B nonimmigrant status for these physicians is not subject to the numerical limitations contained in INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A). *See* INA sec. 214(l)(2)(A), 8 U.S.C. 1184(l)(2)(A). While participation in the Conrad 30 program (relating to waivers based on requests from a state agency of public health or its equivalent for service in an HHS-designated shortage area) is limited to 30 participants per eligible jurisdiction annually, the other programs have no limits on the number of participants. *See* INA sec. 214(l)(1)(B), 8 U.S.C. 1184(l)(1)(B).

In the scenarios where they are not cap-exempt, DHS believes this rule may have a positive impact for some highly skilled, highly paid aliens. DHS notes that shortages of medical professionals are multi-causal and beyond the scope of one visa category to address. With respect to the ability to offer increased wages generally, DHS acknowledges that healthcare institutions, like employers in all industries, are impacted by a variety of factors in determining employee salary. For employers unable to proffer wages that equal or exceed prevailing wage levels with greater chances of selection, they may be able to find available and qualified workers outside of the H-1B program, including U.S. workers. Additionally, it is possible that aliens filling the positions described by these commenters would be eligible for alternate immigrant or nonimmigrant classifications offering employment authorization.

Further, DHS disagrees with the comment that this rule may unfairly discriminate against primary care physicians who typically have lower annual salaries than certain specialty physicians. In general, family physicians or other primary care physicians have different SOC codes than specialty physicians. As DOL prevailing wage level calculations generally differ by SOC codes, when wage data is available, the corresponding wage level would necessarily account for the different occupational classification for primary care physicians as opposed to other types of physicians. When such wage level data is unavailable, wage level weighting will be based on the skill,

education, and experience requirements for the position, again taking into account the particulars of the relevant occupational classification, such that registrations or petitions for primary care physicians will be weighted in comparison to the normal requirements for primary care physicians and not in comparison to other types of physicians. As such, DHS does not believe that this rule will disadvantage registrations or petitions for primary care physicians or any other subset of physicians.

Comment: Some commenters identified other employers and professionals in the healthcare field who would be negatively impacted by this rule, including nurses; pharmacists; laboratory technologists, healthcare IT professionals working in data security, analytics, and telehealth systems who are protecting patient data and furthering innovation; and therapists and counselors providing mental health and other services. Some commenters noted that those in emergency preparedness fields who partner with healthcare workers will be negatively impacted by this rule. These commenters generally stated that the rule would make it financially and logistically difficult for healthcare-related employers to recruit and retain essential staff.

Response: Overall, DHS believes this rule will have a positive impact by increasing the chance of selection for the most highly skilled, highly paid aliens within each SOC code and encouraging companies to hire U.S. workers. For employers unable to proffer wages that equal or exceed prevailing wage levels with greater chances of selection, they may be able to find available and qualified workers outside of the H-1B program, including U.S. workers. DHS notes that shortages in the number, distribution, and specialties of medical professionals are multi-causal and beyond the scope of one visa category to address. DHS believes that this rule will promote the interests of U.S. workers—and those students and trainees who are future workers—in line with administration priorities. Additionally, it is possible that aliens filling the positions

described by these commenters would be eligible for alternate immigrant or nonimmigrant classifications offering employment authorization.

11. Negative Impacts on Rural or Underserved Communities

Comment: Multiple commenters stated that the proposed rule would have a particularly negative impact on healthcare in rural and underserved areas with one commenter noting the unique and complex challenges faced by patients in rural areas. A commenter stated that in falsely assuming high-skilled workers are paid a higher wage, the rule devalues high-skilled physicians in underserved areas and could lead to the consolidation of physicians in larger healthcare organizations, leading to greater costs for patients. Some commenters expressed specific concerns that underserved or rural areas that are reliant on international doctors would face difficulties with or lose healthcare access, with one commenter noting such areas could potentially face facility closure. Without citing specific data, a commenter remarked that IMGs are more likely to serve in rural and underserved areas compared to their U.S. counterparts. The commenter said that the proposed rule disincentivizes entering specialty programs with lower wages, further exacerbating primary care shortages in rural and underserved areas. Another commenter similarly opined that because U.S. medical graduates typically apply for and locate in urban and higher-income areas, when non-urban medical facilities lose access to IMGs because of the proposed rule, they would struggle to find alternative healthcare worker options. The commenter reasoned that the result would be the closure of emergency rooms, obstetric services, and specialty care, creating "medical deserts" that require rural residents to travel hours for basic medical care.

Response: DHS acknowledges the important role that foreign physicians may play in providing healthcare in rural and/or underserved communities, including early career and entry level physicians. As explained in response to the previous comments, Congress has established programs meant to direct foreign medical graduates to those communities.

As noted previously, physicians whose nonimmigrant status is changed to H-1B through their participation in any of the three waiver programs in INA sec. 214(l), 8 U.S.C. 1184(l), are not subject to the annual H-1B caps. The Conrad 30 program (relating to waivers based on requests from a state agency of public health or its equivalent for service in an HHS-designated shortage area) is limited to 30 participants per eligible jurisdiction annually. *See* INA sec. 214(l)(1)(B), 8 U.S.C. 1184(l)(1)(B). However, there are no annual limits on the number of aliens who can obtain a waiver through service in an HHS-designated shortage area based on the request of an interested Federal Government agency. Since these programs are not subject to the annual H-1B caps, they will not be affected by this rule and the programs will continue to provide a pipeline for these physicians to serve in HHS-designated shortage areas.

Congress has established a similar statute in the immigrant context, which also channels physicians to serve in HHS-designated shortage areas, commonly known as the Physician National Interest Waiver Program. *See* INA sec. 203(b)(2)(B)(ii)(I), 8 U.S.C. 1153(b)(2)(B)(ii). That program has no limits on the number of physicians who can participate in a given fiscal year, though there are numerical limitations on the number of employment-based immigrant visas that can be allocated annually. This program is unaffected by this rule and will continue to provide a pipeline for an unlimited number of physicians to serve in HHS-designated shortage areas.

DHS acknowledges that some alien physicians seeking to serve in rural or underserved areas would be subject to H-1B numerical limitations. DHS is aware that medical institutions in rural or underserved areas may not be U.S. institutions of higher education, related or affiliated non-profit entities, or non-profit research organizations or governmental research organizations and, as a result, aliens who are employed by or who have received an offer of employment from such medical institutions may not be exempt from the annual H-1B numerical limitations under INA sec. 214(g)(5), 8 U.S.C.

1184(g)(5). DHS also acknowledges that not all alien physicians who serve in rural or underserved areas as H-1B nonimmigrants are participating in the waiver programs of INA sec. 214(l), 8 U.S.C. 1184(l). However, some medical institutions in rural or underserved areas do meet the requirements to be cap-exempt, and their employees will not be subject to the numerical limitations.[43] To the extent these physicians are subject to H-1B numerical limitations, DHS believes this rule will have a positive impact by increasing the chance of selection for highly skilled, highly paid aliens. Additionally, it is possible physicians may avail themselves of alternative pathways to serve in these areas.

Further, as with all other registrations, DHS will weigh and select registrations for these positions generally according to the highest OEWS prevailing wage level that the proffered wage equals or exceeds, which necessarily takes into account the area of intended employment when such wage level data is available. Where there is no current OEWS prevailing wage information for the proffered position, which DHS recognizes is the case for some physician positions based on limitations in OEWS data, the registrant would follow DOL guidance on prevailing wage determinations to determine which OEWS wage level to select on the registration. The determination of the appropriate wage level in those instances would be based on the skill, education, and experience requirements of the position, and generally does not take into consideration the area of intended employment. Therefore, DHS does not believe that this rule necessarily will disadvantage rural and/or underserved communities relative to registrations or petitions based on offers of employment in other areas.

Comment: Expressing concern about the impact of the rule on rural healthcare, a commenter pointed specifically to the impact on nurses in H-1B status, stating that in

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[43] DHS, USCIS, OPQ, Approvals for New Employment with a DOT Code of 070, 071, 072 Listed by Whether Cap Exempt, Receipt Fiscal year 2020 through 2025. CLAIMS3, ELIS, queried 10/2025, PAER0019171, showing that, from FY 2020 through FY 2025, on average more than 94 percent of H-1B petitions approved for initial employment for physicians, surgeons, and dentists were cap-exempt and not subject to the H-1B cap selection process).

fiscal year 2025, 34 out of the 367 nurses they hired were on H-1B visas. The commenter interpreted data presented in the NPRM as stating that nurses will be treated as a level I position, disadvantaging them as compared to certain other SOC codes.

Response: DHS disagrees with the commenter's blanket assumption that nurses will be treated as a level I position or will be disadvantaged compared to other SOC codes. DHS aims to incentivize employers to offer higher wages, or to petition for positions requiring higher skills and higher skilled aliens that are commensurate with higher wage levels, across all occupations. Under this rule, registrations (or petitions, as applicable) will be weighted generally based on the highest OEWS wage level that the prospective beneficiary's proffered wage equals or exceeds for the relevant SOC code in the area(s) of intended employment. Employers may choose to offer a higher wage to a prospective beneficiary whose skill level they value and who they wish to retain to increase that beneficiary's chances of selection.

12. Negative Impact on Small Businesses, Startups, and Nonprofits

Comment: Several commenters said the proposed rule would have a negative impact on small businesses, startups, and nonprofits. Multiple commenters stated that smaller entities, startups, and nonprofits cannot afford to pay higher wage levels compared to large corporations and often rely on international talent or new graduates to support their business. A commenter said that small businesses and startups will not be able to afford such wage premiums, as they frequently operate with limited capital while offering alternative incentives like equity ownership, stock options, or future profit participation, which would not be recognized under the proposed weighted-lottery selection process. Similarly, commenters wrote that small companies typically lack financial resources or legal staff compared to large corporations with more resources. One commenter did an analysis to show that small businesses would be disproportionately adversely affected by the proposed weighting scheme. This analysis

showed that since small businesses disproportionately have petitions at wage levels I and II, their projected share of H-1B visas would fall.

A few commenters specified that the burden of increased compliance, including documenting wage levels, SOC codes, and matching registration and petition data, may disproportionately strain small companies with fewer resources and often without in-house legal or human resources (HR) compliance teams.

One commenter remarked that the proposed rule may deter talented workers who are seeking opportunities at small businesses or startups that typically offer lower wages. Another commenter stated that although the proposed weighted selection process will disadvantage all U.S. companies that have talent needs that are not met by the domestic labor market, the problem will be worse for smaller-sized employers, and especially for small non-profit employers that are not cap-exempt. Numerous commenters suggested that the proposed rule would disadvantage veteran-owned businesses that are often small and benefit from specialized international workers. Some commenters remarked that nonprofits help underserved communities and without international experts, vulnerable populations could suffer without support.

Response: This rule does not treat people who work for small businesses, startups, non-profits, or other small-sized entities (including veteran-owned businesses) differently than those who work for large, established companies. While DHS recognizes that some small-sized entities may operate on smaller margins than larger companies, if an employer values a beneficiary's work and the unique qualities the beneficiary possesses, the employer could offer a higher wage than required by the prevailing wage level to reflect that value. This rule will benefit those small entities that are applying for relatively higher-paid employees, as they will have a greater chance of their employees being selected compared to the current random selection process. If a small-sized entity is unable to pay a beneficiary at a higher wage level for a greater chance of selection, they

could try to find a U.S. worker. U.S. employers, including small-sized entities, could also consider hiring recent American graduates to meet their business needs while playing an integral part in the U.S. worker's career growth.

DHS acknowledges that this final rule will have an economic impact on small businesses, startups, or other small-sized entities that can only offer a level I wage, as those registrations will have a lesser chance of selection than under the current random selection process. However, as explained in the NPRM, DHS conducted an initial regulatory flexibility analysis and found no other alternatives that achieved the stated objectives with less burden to small entities. 90 FR 45986, 46016 (Sept. 24, 2025). Given that 76 percent of unique cap-subject H-1B filers are small entities, and 47 percent of H-1B cap petitions in FY 2024 were filed by small entities, any alternative process that provides a different, preferential weighting scheme for small entities would undermine the overall utility of this rule, which is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. And as mentioned previously, it is possible that any alternative that imposes a lower burden on small entities generally could also reduce those employers' chance of selection for higher wage level workers.

DHS also disagrees that the burden of complying with the rule will disproportionately affect smaller employers. As stated in the NPRM, DHS estimates that the changes implemented in this rule would increase the time burden by 20 minutes for each registration and by 15 minutes for each petition, whether completed by an HR specialist, in-house lawyer, or outsourced lawyer. If a smaller employer is using an outsourced specialist for H-1B work in general, the additional paperwork burden associated with this rule is unlikely to be substantial in most cases.

Finally, DHS does not believe this rule will have a significant negative impact on nonprofit organizations. Congress already exempted from the H-1B cap any alien who is employed or has received an offer of employment at a U.S. institution of higher

education, a non-profit entity related or affiliated with a U.S. institution of higher education, or a non-profit research organization or a governmental research organization. *See* INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5); 8 CFR 214.2(h)(8)(iii)(F). Thus, many petitions for nonprofits will not be affected by this rule. For those nonprofit entities that are not cap-exempt and are unable to proffer wages that equal or exceed prevailing wage levels with greater chances of selection, they may be able to find available and qualified U.S. workers.

13. Industry and Occupational Disparities

Comment: Some commenters expressed concern that the proposed rule would disproportionately favor certain industries and occupations over others, as some sectors have more financial resources and are more readily able to absorb the costs associated with offering higher wages. Some commenters said that industries with naturally higher wage structures, such as technology and finance, would have an advantage over sectors with lower prevailing wages, regardless of the importance or skill level of the positions.

Other commenters asserted that the rule would put some industries at a competitive disadvantage. Many commenters said that wage-based selection would privilege existing high-income sectors and reinforce barriers for professionals working in critical lower-paying fields, positions that are often hard to fill and vital to U.S. long-term competitiveness. Some commenters remarked that the proposed rule may have a negative effect on the arts and other creative and recreational endeavors in the United States. One commenter said that the rule will harm educators, health care workers, and nonprofit professionals. A commenter said that a wage-based selection system is biased against certain professions, particularly lower-paying professions like research, healthcare, urban planning, and civil engineering. This commenter asserted that the additional financial burden of offering higher wages would eliminate some industries' abilities to use the H-1B program. Other commenters wrote that the rule creates a significant bias towards large

multinational technology corporations and disfavors the engineering industry, which is already facing a critical labor shortage. One commenter said that architecture, engineering, and construction industries would be disadvantaged under the proposed rule's weighting system, and another commenter suggested that every engineering hire should be in a bracket based on the specific industry, rather than all competing against software engineers. A few other commenters discussed the rule's perceived disproportionate harm on manufacturers, particularly on small- and medium-sized manufacturers and manufacturers in the electro-industry, stating that many jobs in the manufacturing industry fall into lower wage levels. A different commenter suggested that employers, such as universities, hospitals, regional service firms, and manufacturers that maintain distributed or hybrid operations would be penalized. A commenter said that the proposed rule unfairly disadvantages essential infrastructure and public-interest professions—such as civil, structural, environmental, and transportation engineering—whose wages are tied to public-sector pay scales and regional cost-of-living differences rather than individual skill or value to the nation. Citing data on median salaries per wage level, another commenter stated that the proposed H-1B cap selection process disadvantages innovative technology companies that pay significantly higher wages even at lower wage levels, and remarked that the proposed rule fails to fulfill President Trump's directive to prioritize high-paid nonimmigrants, as it does not account for the substantial wage differences between industries and employers at the same wage level.

Other commenters expressed concern that the wage-based weighting system would create a system that prioritizes "roles less important to U.S. interests." The commenters stated that, due to the complex nature of wage level calculations, there are scenarios where individuals assigned a high wage level in an occupation that the commenter considered less important to national interests would receive more entries in the H-1B lottery than an individual assigned a lower wage level in a more important

occupation. The commenter provided examples of how a landscape architect and acupuncturist with higher wage level salaries would have higher chances of selection than an AI researcher, surgeon, or startup executive.

Response: This rule does not, and is not intended to, treat any industries better or worse than others. Nor does this rule seek to prioritize "roles less important to U.S. interests." DHS acknowledges that, as stated in the NPRM, this rule will likely impact the number of selected registrations for certain SOC codes, with some occupations possibly seeing a decrease in selected H-1B registrations while others seeing an increase. 90 FR 45986, 46008-09 (Sept. 24, 2025). However, the goal of this rule is to implement a weighted selection process that would generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while ensuring meaningful opportunities for selection regardless of industry or profession. An employer could offer a higher wage than required by the prevailing wage level to reflect the value of the prospective employee; an employer that chooses not to do so, or cannot do so, may still enter a registration that would potentially be selected. DHS believes this rule will benefit the best and brightest workers in all professions and industries.

14. Geographic and Regional Disparities

Comment: Some commenters said that the weighted selection process fails to account for regional differences in wage levels, creating geographic inequities and favoring employers in high-wage metropolitan areas while disadvantaging those in regions with lower costs of living and correspondingly lower prevailing wages. Some commenters remarked that talent would concentrate in high-cost regions, such as Silicon Valley and the Bay Area, noting that wages differ substantially by location due to regional cost-of-living variation, not worker skill. Conversely, other commenters claimed that the proposed weighted selection process would benefit companies in lower-cost areas while hurting startups and other tech companies in high-cost hubs like Silicon Valley,

with one commenter stating that pushing talent away from such hubs would make these regions less globally competitive.

Some commenters wrote that the rule would exacerbate existing regional economic imbalances by concentrating talent in a few major metropolitan areas and leaving rural areas with talent shortages. Multiple commenters said companies in rural areas providing competitive wages for their location are disadvantaged against employers in high-cost metropolitan areas that can offer higher wages. Some commenters also remarked that the proposed rule would leave rural areas underserved and exacerbate economic inequality. A commenter wrote that the proposed rule would undermine the "billions of dollars" the United States has invested into encouraging regional development in smaller cities. Another commenter said that the proposed rule would create severe economic disruptions in regions that have built their economies around industries that depend on international talent by restricting the flow of such talent.

Response: DHS does not believe that this rule will necessarily disadvantage certain geographic regions as compared with others. As with all other cap-subject H-1B registrations (or petitions), DHS will weight registrations for these positions generally according to the highest OEWS prevailing wage level that the proffered wage equals or exceeds, which necessarily takes into account the area of intended employment. In other words, under this rule, registrations corresponding to the same wage level will be weighted the same regardless of whether their proffered wages are different owing to their areas of intended employment. This final rule neutralizes geographic differences in salary amounts by taking into account the area of intended employment when weighting registrations. DHS therefore does not agree that this rule would disadvantage certain geographic regions, exacerbate existing regional economic imbalances, or undermine regional development. With respect to the commenter's concern about regions with economies built around specific industries that depend on international talent, DHS

disagrees that this rule would restrict the flow of such talent. Instead, the rule will generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels.

15. Negative Impacts on Mixed Compensation Models

Comment: Commenters expressed concern that a wage-based selection process does not consider all aspects of compensation. A commenter pointed out that while the OEWS data takes into account a range of other types of pay (such as commission, cost-of living allowance, hazard pay, incentive pay, piece rate, production bonus, and tips,) employers are only allowed to use the base wages when complying with wage requirements in the H-1B program.

Commenters wrote that an employee's pay can go beyond base pay and can include: bonuses, equity, benefits, commission, cost-of-living allowance, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay, over-the-road pay, piece rate, portal-to-portal pay, production bonus, and tips, with some commenters noting that such incentives may vary by industry. Other commenters expressed concern that small businesses and startups, which often rely on equity compensation, future profit participation, or stock options rather than high salaries, would be particularly disadvantaged. Some commenters said that if only base salary is considered, it would not provide a standardized comparison and could distort the H-1B selection process.

Some commenters remarked that employers relying on equity-based pay may appear to offer lower wages despite competitive packages and cautioned that these employers could inflate base salaries without improving total compensation, potentially distorting the system. Similarly, a commenter remarked that the proposed rule would overlook the challenge of adjudicating disputes about compensation packages that include bonuses, equity, or other non-cash benefits. The commenter stated that because

the system privileges base salary alone, employers will be incentivized to overstate base pay on paper while cutting back on other components of total compensation. The commenter expressed concern that this creates enforcement disputes that USCIS is ill-equipped to resolve at scale.

Some commenters suggested that DHS could improve the system by incorporating total compensation, including the cash value of stock and bonuses. A commenter suggested that if wages are considered, it would make sense to consider past Internal Revenue Service (IRS) transcripts of candidates to get a more complete picture of compensation.

Response: DHS recognizes that companies may offer various forms of pay and benefits provided as compensation for services, such as cash bonuses, stock options, paid insurance, retirement and savings plans, and profit-sharing plans. While cash bonuses may, in limited circumstances, be counted towards the annual salary (*see* 20 CFR 655.731(c)(2)), other forms of benefits, such as stock options, profit sharing plans, and flexible work schedules may not be readily quantifiable or guaranteed, which means that they cannot reliably be calculated into proffered wages. While this may affect some petitioners and beneficiaries negatively, DHS does not believe there is a viable alternative that could consider all of the various forms of compensation that companies may offer that could be implemented in an uncomplicated and predictable way. Additionally, DOL regulations define payment of wages for purposes of satisfying the H-1B required wage. *See* 20 CFR 655.731(c)(2). This rule does not change how wages are defined or measured. Regarding the suggestion to consider past IRS transcripts of candidates, DHS notes that proffered wages at the time of registration and petition filing generally relate to future employment, so it is unclear what purpose transcripts or other IRS documentation of prospective employees would serve.

16. General Concerns on Wage-Based Selection

Comment: Many commenters said that wage is not a proxy for experience, skill, or education and that the rule erroneously assumes those who earn more contribute more to the economy or society. Other commenters stated the proposed rule would significantly reduce the chances of obtaining an H-1B visa in entrepreneurial, academic, and research spaces which would restrict access to international workers with specialized skills in these areas. Other commenters said that the new system would disadvantage top earners, as a highly paid individual with a level I wage in a high-earning field would be ranked lower than someone who earns far less as a level IV in a lower-earning field. Commenters also stated that the proposed rule would favor only experienced, high-paid workers and big firms, while shutting out early-career professionals and the startups, healthcare institutions, and research sectors that rely on them. One commenter said that by conflating wage level with skill and innovation potential, DHS would systematically disadvantage the early-career talent pipeline that drives technological breakthroughs. Another commenter stated that the proposed weighted selection process does not account for a level IV H-1B employee who may be laid off and may need to accept a bridge job at level II or III, putting their status in jeopardy.

Response: DHS disagrees with these comments and believes that salary generally is a reasonable proxy for skill level.[44] DHS believes that an employer who offers a higher wage than required by the prevailing wage level does so because that higher wage is a clear reflection of the beneficiary's value to the employer, which reflects the unique

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[44] *See* DOL, Educational Level and Pay, https://www.dol.gov/general/topic/wages/educational (last visited Nov. 24, 2025) ("Generally speaking, jobs that require high levels of education and skill pay higher wages than jobs that require few skills and little education."). *See also* "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program," 76 FR 3452, 3453 (Jan. 19, 2011) (it is a "largely self-evident proposition that workers in occupations that require sophisticated skills and training receive higher wages based on those skills."); Daniel Costa & Ron Hira, Economic Policy Institute, H-1B Visas and Prevailing Wage Level (May 4, 2020), https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels. ("Specialized skills should command high wages; such skills are typically a function of inherent capability, education level, and experience. It would be reasonable to expect that these workers should receive wages higher than the median wage.").

qualities the beneficiary possesses. DHS does not believe this rule will favor certain high paying professions or companies, because the rule takes into account wage level relative to the SOC code when weighting registrations (or petitions). Additionally, DHS recognizes that this rule will decrease the chance of H-1B cap selection for jobs with a proffered wage that corresponds to a level I wage, but it does not shut out early-career professionals. As stated in the NPRM and throughout this final rule, DHS recognizes the value in maintaining the opportunity for employers to secure H-1B workers at all wage levels. DHS also disagrees with the concern that wage levels are inadequate to compare workers across occupations as this rule is designed to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while ensuring meaningful opportunities for selection regardless of industry or profession.

DHS also does not believe that this rule will disadvantage particular industries or employers based on geography, size, or other factors. Wage levels already account for these factors by taking into account the area of intended employment and SOC code. While the weighted selection process may not account for every scenario, such as a laid-off worker taking a temporary lower paying job, DHS believes that this is a rare scenario and is unable to provide for every possible scenario when implementing a weighting process that is uncomplicated and predictable for prospective petitioners. Further, DHS believes that the advantages of the new selection process and the benefits it will bring to the economy overall outweigh any possible disadvantages that may occur in rare cases.

17. Concerns with the OEWS Program

Comment: Several commenters expressed concern with using the OEWS program. For instance, a commenter noted that the rule relied on faulty wage level assumptions in using the OEWS data and said that the OEWS wage survey, on which H-1B wage levels are based, was never intended to measure skill or productivity. The commenter explained that its purpose is to represent mean and percentile wage

distributions within occupational codes, and it makes no adjustment for the employer's industry, business model, or regional cost factors. The commenter said that the proposed rule's assumption that positions commanding a wage that corresponds to a level IV wage represent the "most skilled" workers ignores the structural wage differentials that exist across industries. The commenter notes that DOL's OEWS data aggregate wages across all employers within an occupation, without adjusting for the profit structure, funding model, or public versus private character of the employer, and that the wage levels are based primarily on statistical percentiles of pay, not individualized measures of experience. As a result, the proposed weighted selection process risks granting preferential treatment to junior employees in lucrative markets over experienced professionals in essential but lower-paying fields, such as education, public health, and infrastructure engineering. Similarly, several commenters stated that wage levels are inadequate to compare workers across occupations.

A commenter also expressed concern with wage inflation, noting that it reflects market conditions rather than skill increases. The commenter noted that some areas, such as technology, finance, and law have seen wage inflation in recent years, where compensation has escalated due to market competition rather than measurable increases in skill and the proposed weighted selection process would reward industries that can inflate salaries fastest, not those that develop or employ the most capable workers. Other commenters stated that the selection process artificially inflates the chances of roles requiring less training, experience, or responsibility.

Response: DHS appreciates these concerns but maintains that salary generally is a reasonable proxy for skill level.[45] While DHS is aware that some structural wage

[45] *See* DOL, Educational Level and Pay, https://www.dol.gov/general/topic/wages/educational (last visited Nov. 24, 2025) ("Generally speaking, jobs that require high levels of education and skill pay higher wages than jobs that require few skills and little education."). *See also* "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program," 76 FR 3452, 3453 (Jan. 19, 2011) (it is a "largely self-evident proposition that workers in occupations that require sophisticated skills and training receive higher

differentials may exist across industries, DHS is not aware of an efficient and uncomplicated way to incorporate such differentials into the OEWS wage system or to otherwise account for these differentials when weighting and selecting registrations or petitions. Similarly, DHS is not aware of an alternate program (other than OEWS) that would consider such unique factors as individualized experience and wage inflation. While no data set is perfect, the OEWS data represents the best available resource for this purpose. DHS favors using the OEWS wage level system because it is already used in the H-1B program, widely recognized, publicly available, and updated annually by DOL. DHS intentionally chose a selection methodology that used information and resources already familiar to most petitioners and stakeholders. Utilizing OEWS wage levels allows USCIS to leverage employers' existing knowledge of the wage levels in order to implement the weighted selection process. Employers are already required to complete LCAs and access OEWS wage information or alternative wage sources. This rule simply requires that the employer will look at the wage they are offering the alien and, when OEWS wage level is available, select the wage level that corresponds to that offered wage for the offered position's SOC codes and metropolitan statistical area (MSA). Although OEWS does not collect information on skill or experience levels, DHS believes it is reasonable to use features of the OEWS wage distribution as a proxy for those variables. If OEWS wage level is unavailable, the employer determines the wage level using the DOL guidance that the employer would otherwise follow when determining the relevant wage level to select on the LCA.

Comment: A commenter expressed concern that the rule would create confusion between the wage level offered for USCIS purposes and the wage level required under

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wages based on those skills."); Daniel Costa & Ron Hira, Economic Policy Institute, H-1B Visas and Prevailing Wage Level (May 4, 2020), https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels. ("Specialized skills should command high wages; such skills are typically a function of inherent capability, education level, and experience. It would be reasonable to expect that these workers should receive wages higher than the median wage.").

DOL rules. The commenter noted that if a petitioner decides to pay a beneficiary a higher wage level than what is required under DOL rules for a better chance at selection (such as a level IV wage), then the prevailing wage level indicated in its registration submitted to USCIS will not match the prevailing wage level indicated on its LCA submitted with the petition (which may have been a level I wage). The commenter stated that at minimum, USCIS should refine 8 CFR 214.2(h)(8)(iii)(D)(*1*) to make clear that the actual LCA submitted with an H-1B petition should still calculate the prevailing wage based upon existing DOL rules, and the offered wage listed in the registration is to be used solely for determining the weighting of the lottery entry.

Response: As clearly stated in the NPRM, a registrant is required to select the box for the highest OEWS wage level ("wage level IV," "wage level III," "wage level II," or "wage level I") that the beneficiary's proffered wage generally equals or exceeds for the relevant SOC code in the area(s) of intended employment. 90 FR 45986, 45992 (Sept. 24, 2025). DHS does not agree that this is confusing. Conversely, DHS believes it would be confusing to add language in 8 CFR 214.2(h)(8)(iii)(D)(*1*) that discusses how to calculate the prevailing wage under DOL rules since this provision is about filing procedures with USCIS.

18. Other Opposition

Comment: A commenter expressed concern that the rule allows the government to manipulate market-based wages through the use of immigration policy, saying this rule establishes "dangerous precedents for government wage determination." The commenter claimed that this represents "a fundamental departure from how the United States has historically approached labor markets," and noted that in the labor market, wages are primarily determined through negotiations between employers and workers. While the commenter acknowledged that the government is justified in ensuring fair wages for U.S. workers and H-1B workers, the commenter concluded that the proposed weighted

selection system goes beyond these legitimate interests into government intervention in market-based wages.

Response: DHS disagrees with this commenter. This rule merely fills in a statutory gap regarding how to administer the H-1B numerical allocations in years of excess demand, consistent with DHS's statutory authority to determine the form and manner of submitting H-1B petitions and the administration of the H-1B numerical allocations. *See* INA secs. 103(a) and 214(c)(1), 8 U.S.C. 1103(a) and 1184(c)(1). This rule does not constitute government intervention in market-based wages. Through this rule, DHS is not mandating what wages employers must pay their employees. Employers that wish to participate in the H-1B program may be incentivized to offer higher wages to their prospective H-1B workers in order to increase their chances of selection under the cap, but they remain free to determine what wages they want to offer prospective H-1B employees. Employers also remain free to choose not to participate in the H-1B program.

Further, this rule does not represent "government intervention" in the labor market nor a "fundamental departure from how the United States has historically approached labor markets," as the commenter claimed. In order to participate in the H-1B program, employers have always had to meet certain wage requirements, including prevailing wage requirements as determined by DOL and other generally applicable Federal and state wage requirements. *See* 20 CFR 655.40. It is therefore unclear what the commenter means by claiming that this rule would establish "dangerous precedents for government wage determination" when various government agencies routinely regulate an employer's wage obligations and given that this rule does not mandate what wages employers must pay their employees.

Comment: A few commenters discussed how the proposed rule would unfairly and disproportionately harm certain minority groups. Some of these commenters specifically noted the disproportionate impact on Asian and Pacific Islander groups,

pointing out that Asian workers account for the majority of H-1B workers in the United States. Another commenter said that the rule would have a disparate impact on Hispanic groups, claiming that the rule would deepen existing racial wealth disparities.

Response: DHS disagrees that this rule will unfairly impact certain minority groups or deepen racial wealth disparities. This rule does not target or favor any particular minority group. This rule merely increases the chance of selection for aliens who will be paid a wage that corresponds to a higher wage level, regardless of their race, ethnicity, or country of origin.

C. Legal Authority, Basis, and Background

1. Statutory Authority

Comment: Several commenters supported the rule, saying that the changes to H-1B selection are consistent with statutory language. Commenters stated that the statutory language is ambiguous and silent as to how visas should be allocated if they cannot be issued in the order that they were filed, and that the proposed wage level weighting scheme is reasonable and within DHS's authority. Some commenters agreed that DHS has the authority to determine how the government selects H-1B petitions when they receive more petitions than available visas.

Response: DHS agrees that the statute is silent as to how USCIS must select H-1B petitions, or registrations, to be filed toward the numerical allocations in years of excess demand; the term "filed" as used in INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), is ambiguous;[46] and these changes are reasonable and within DHS's general authority. *See* INA secs. 103(a), 214(a), and (c)(1), 8 U.S.C. 1103(a), 1184(a), and (c)(1).

Comment: Some commenters said the proposed rule would violate the INA, which prioritizes the selection of H-1B cap-subject petitions in the "order in which they

[46] *See Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156, 1170 (D. Or. 2017).

are filed," and that USCIS lacks the statutory authority for the proposed weighted selection process. Some commenters stated that the INA says that DHS "shall" issue visas in the order in which they are filed, underscoring that this is a statutory mandate not subject to DHS's discretion. Commenters stated that, while the random lottery is permissible, there is nothing in the statute allowing for wage-based prioritization and thus the proposed rule exceeds DHS's statutory authority. Commenters remarked that INA sec. 214(g) is silent on allocation methods beyond random selection, and that USCIS cannot use the statute's silence as an invitation to adopt wage- or skill-based criteria. Echoing other commenters' concerns about DHS's lack of statutory authority for the rule, some commenters added that an executive action like the one proposed in the NPRM would require legislative action or approval by Congress. Commenters stated that the Executive Branch does not have "plenary authority" and there are processes in place to amend laws.

A commenter said the rule is ultra vires because it improperly changes the process and adds new requirements to the selection order for H-1B cap subject petitions that exceed what is clearly stated in the INA. The commenter cited INA sec. 214(g)(3), which states: Individuals subject to H-1B numerical limitations "… shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status." Pointing out that Congress did not change this section when it amended it through the H-1B Visa Reform Act of 2004, the commenter asserted that the proposal to add the wage level element violates clear congressional intent. The commenter added that the well-established principle of law remains that an agency cannot modify a statute by regulation, and that since the statute is neither ambiguous nor silent, Congress did not leave a gap for USCIS interpretation via regulation. The commenter added that it is particularly telling that the agency previously evaluated this very issue in January 2019 and concluded that the INA is clear and does not permit the type of prioritization it

proposes here.[47] The commenter asserted that USCIS cites no congressional intent relating to the H-1B numerical cap and its justification and reasoning lacks analysis from official research or studies by government agencies.

Several other commenters also noted that DHS previously determined in its 2019 rule, Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens, that prioritization based on salary would require statutory changes. Some commenters said that senators introduced bipartisan legislation four days after the publication of this proposed rule to authorize DHS to process H-1B petitions on proffered wages, and commented that Congress would not be legislating on this exact issue if it thought DHS could implement these changes to the H-1B program on its own.

Some commenters wrote that the Supreme Court's 2024 overruling of the *Chevron* framework eliminated the judicial deference to agencies in Administrative Procedure Act (APA) rulemaking. A commenter noted that since the 2024 Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, *Chevron* deference has been overturned, "thereby removing the power of administrative agencies to interpret ambiguous statutes." Similarly, another commenter stated that the proposed rule would go beyond the discretion afforded by Congress and that USCIS discretion is constrained by *Loper Bright* such that USCIS may not simply use its preferred interpretation of "filing" under that statute, but instead must use "the best" interpretation, as any other interpretation is impermissible. The same commenter indicated support for the Administration's goal of prioritizing high-skilled immigration, but stated that USCIS' obligation to administer the INA does not give USCIS the flexibility to select applicants in the manner proposed by this rule.

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[47] *See* "Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap Subject Aliens," 84 FR 888, 913 (Jan. 31, 2019) (noting that "DHS believes that reversing the cap selection order to prioritize beneficiaries with a master's or higher degree from a U.S. institution of higher education is a permissible interpretation of the existing statute, as explained in detail in response to other comments in this preamble. DHS believes, however, that prioritization of selection on other bases such as those suggested by the commenters would require statutory changes.").

Response: DHS disagrees with the commenters' assertions that the weighted selection process would violate the INA or that DHS lacks the statutory authority to implement a weighted selection process. The statute is silent as to how USCIS must select H-1B petitions, or registrations, to be filed toward the numerical allocations in years of excess demand; the term "filed" as used in INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), is ambiguous;[48] and these changes are reasonable and within DHS's general authority. *See* INA secs. 103(a), 214(a), and (c)(1), 8 U.S.C. 1103(a), 1184(a), and (c)(1).

Excess demand for numerically limited H-1B cap numbers created a rush of simultaneous submissions at the beginning of each H-1B cap petition period, preventing application of the numerical limitations based solely on the order in which the petitions are received by USCIS. *See Liu* v. *Mayorkas,* 588 F. Supp. 3d 43, 48 (D.D.C. 2022) (discussing the high demand for H-1B visas, the operational challenges USCIS faced administering the H-1B cap because of the high demand, and the creation of the registration requirement).

DHS acknowledges that Congress directed DHS to process earlier-filed petitions before later-filed petitions, *see* INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3) (stating that aliens who are subject to the numerical limitations will be "issued visas (or otherwise provided nonimmigrant status) in the order in which the petitions are filed"),[49] but Congress did not define what it means to "file" a petition, or how to order petitions that are filed during the same timeframe.

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[48] *See Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156, 1170 (D. Or. 2017).

[49] *See also* "Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens," 84 FR 888, 896 (Jan. 31, 2019) (noting that "a literal application of this statutory language [to issue visas or otherwise provide H-1B status in the order in which the petitions are filed, down to the second] would lead to an absurd result" because "[s]uch a literal application would necessarily mean that processing delays pertaining to a petition earlier in the petition filing order would preclude issuance of a visa or provision of status to all other H-1B petitions later in the petition filing order." Therefore, USCIS' "longstanding approach to implementing the numerical limitation has been to project the number of petitions needed to reach the numerical limitation. . . .").

The Secretary has broad authority to administer and enforce the INA, establish such regulations as the Secretary deems necessary for carrying out such authority, and to prescribe the time and conditions under which an alien may be admitted to the United States as a nonimmigrant and how an importing employer may petition for nonimmigrant workers. *See* INA secs. 103(a), 214(a)(1), and 214(c)(1), 8 U.S.C. 1103(a), 1184(a)(1), and (c)(1). Such authority includes prescribing rules to fill statutory gaps.[50]

DHS has leveraged these authorities to make significant improvements to the H-1B selection process over the years in response to the high demand, consistent with the purpose and structure of the annual numerical limitations. The registration process, for instance, selects among "registrations submitted electronically over a designated period of time to ensure the fair and orderly administration of the numerical allocations." 84 FR 896 (Jan. 31, 2019).[51]

DHS's random selection process is a similar type of gap-filling measure. When this process was previously challenged, DHS prevailed.[52] The court observed that "[i]t is not difficult to envision a scenario where many more petitions arrive on the final receipt date than are needed to fill the statutory cap, and processing them 'in order' . . . may also be random and arbitrary."[53] This court importantly held that "Congress left to the

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[50] *See Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 395 (2024) (explaining that a statute's meaning may be that the agency is authorized to exercise a degree of discretion and empowered to prescribe rules to fill in statutory gaps based on "reasoned decision making"); *see also Liu* v. *Mayorkas,* 588 F. Supp. 3d 43, 55 (D.D.C. 2022) (finding that the registration requirement does not violate the INA, is not ultra vires, and that registration is merely "an antecedent procedural step to be eligible to file an H-1B cap[-subject] petition"); *Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156 (D. Or. 2017).

[51] DHS notes that the registration process, like the petition process that applies when registration is suspended, faithfully implements INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3) by, among other things, ensuring that earlier-filed registrations and petitions receive priority over later ones. For instance, in addition to allowing for a more efficient administration of the annual numerical allocations, the process accounts for the possibility that DHS will receive an insufficient number of simultaneously submitted registrations during the initial registration to meet the H-1B regular cap; in such a circumstance, registration will remain open until USCIS has received a sufficient number of registrations for unique beneficiaries to meet the cap. *See* 8 CFR 214.2(h)(8)(iii)(A)(*5*)(*i*); *see also* 84 FR 896 (Jan. 31, 2019) (explaining that, where an insufficient number of registrations have been received during the initial registration period, USCIS would select all of the registrations properly submitted during the initial registration period, and that registrations submitted after the initial registration would continue to be selected on a rolling basis until such time as a sufficient number of registrations have been received).

[52] *See Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156 (D. Or. 2017).

[53] *Id.* at 1174.

discretion of USCIS how to handle simultaneous submissions" and "USCIS has discretion to decide how best to order those petitions."[54] In short, DHS has authority to engage in reasoned decision making with regard to how to administer the H-1B petitioning process (including whether to require a registration process as an antecedent procedural step to be eligible to file an H-1B cap-subject petition), and how to best select among simultaneously submitted H-1B registrations or petitions.[55] Congress provided DHS with the authority to better ensure a fair, orderly, and efficient allocation of H-1B cap numbers based on reasoned decision making, including consideration of the overall statutory scheme and purpose of the classification: the selection of highly skilled and highly paid nonimmigrants in the United States while protecting the wages, working conditions and job opportunities of U.S. workers.

DHS acknowledges that it has implemented regulations over the years that provide for a random selection from all petitions or registrations that occur within a certain timeframe. *See, e.g.,*70 FR 23775 (May 5, 2005), 84 FR 888 (Jan. 31, 2019). However, while the current random selection of petitions or registrations is reasonable, DHS believes it is neither the optimal, nor the exclusive method of selecting registrations or petitions toward the numerical allocations when more registrations or petitions, as applicable, are simultaneously submitted than projected as needed to reach the numerical allocations. Pure randomization does not serve the ends of the H-1B program or congressional intent to help U.S. employers fill labor shortages in positions requiring highly skilled workers.[56] Under the current random selection process, in every fiscal year

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[54] *Id.* at 1176.

[55] *See Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 395 (2024) (explaining that a statute's meaning may be that the agency is authorized to exercise a degree of discretion and empowered to prescribe rules to fill in statutory gaps based on "reasoned decision making"); *see also Liu* v. *Mayorkas,* 588 F. Supp. 3d 43, 55 (D.D.C. 2022) (finding that the registration requirement does not violate the INA, is not ultra vires, and that registration is merely "an antecedent procedural step to be eligible to file an H-1B cap[-subject] petition"); *Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156 (D. Or. 2017).

[56] *See* H.R. Rep. 101-723(I) (1990), as reprinted in 1990 U.S.C.C.A.N. 6710, 6721 (stating "The U.S. labor market is now faced with two problems that immigration policy can help to correct. The first is the need of

from FY 2019 through FY 2024, petitions for beneficiaries at wage level III and wage level IV were the least represented among all wage levels in cap-subject H-1B filings, both under the regular cap and the advanced-degree exemption.[57]

Regarding the comments that referenced recently proposed legislation to support assertions that this rule exceeds DHS's authority, DHS notes that proposed legislation that is not enacted is not a reliable indicator of congressional intent, particularly as it pertains to previously enacted legislation. *See Red Lion Broadcasting v. FCC*, 395 U.S. 367, 381 n.11 (1969) ("unsuccessful attempts at legislation are not the best of guides to legislative intent.").

Regarding commenters' assertions that the statute is neither ambiguous nor silent on allocation methods beyond random selection, DHS observes that the statute does not expressly refer to allocation by random selection or address how the numerical allocations should be administered when demand exceeds the available supply of H-1B visa numbers. Rather, that is the silence that DHS permissibly filled in prior rules providing for random selection, and is the same silence that DHS is permissibly filling in this final rule by implementing a reasonable selection process, consistent with a key goal of the program: protecting the wages, working conditions, and job opportunities of U.S. workers.

DHS recognizes that it considered the issue of cap selection by wage level in 2019 and concluded at that time that prioritization by wage level or other bases would require statutory change. DHS acknowledged that prior statement in footnote 20 in the preamble to the proposed rule. 90 FR 45986, 45990 (Sept. 24, 2025). DHS reconsidered the analysis as far back as 2020, and again in the context of this rulemaking, and determined

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American business for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found and the need for other workers to meet specific labor shortages.").

[57] USCIS OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY-2018-FY-2024. DOL data downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance (last visited Nov. 24, 2025).

that selection by wage level is consistent with its broad statutory authority and fills a statutory gap in a way that is consistent with a key goal of the program.

2. Congressional Intent

Comment: Commenters stated that the wage-based system is reasonable because it is consistent with the intent of the H-1B program, which is to help U.S. businesses obtain highly skilled foreign workers to supplement the domestic workforce. Some commenters said that a weighted, wage-based selection process would better reflect the statutory intent to admit "highly skilled" workers and help mitigate negative labor market impacts.

Response: DHS agrees with these comments that the rule is consistent with congressional intent and statutory language; the statute is silent as to how USCIS must select H-1B petitions, or registrations, to be filed toward the numerical allocations in years of excess demand; the term "filed" as used in INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), is ambiguous; and these changes are reasonable and within DHS's general authority. DHS, therefore, is relying on its general statutory authority to implement an H-1B cap selection process that prioritizes selection generally based on the highest prevailing wage level that a proffered wage equals or exceeds. *See* INA secs. 103(a), 214(a), and (c)(1), 8 U.S.C. 1103(a), 1184(a), and (c)(1).

Comment: Some commenters wrote that the proposed weighted selection process would violate the clear congressional intent of the H-1B program—to fill existing gaps in the U.S. labor supply in specialized fields. One commenter said Congress deliberately chose prescriptive statutory language that forecloses the type of "executive branch creativity" proposed in this rule. Another commenter said that the rule's weighted selection process would transform the congressionally established H-1B program into a wage-based preference system, for which there is no basis in the text of the INA.

Some commenters wrote that Congress designed the H-1B program to be accessible across wage levels, and that the current random lottery reflects congressional intent for fairness and equal opportunity. A comment from multiple organizations stated that Congress and DOL designed the system to ensure wage parity within an occupation and within a local labor market, not to stack-rank different workers. Some commenters said that the H-1B program was created to give U.S. employers access to specialized workers across all experience levels, and that the NPRM would undermine that purpose. Another commenter wrote that the INA requires USCIS to implement a "fair" selection process when petitions exceed the visa cap, and suggested that the proposed selection process would fail to meet this requirement by disproportionately disfavoring early-career workers. A commenter wrote that the H-1B program has "drifted far from its congressional intent" and fundamental reforms are needed to ensure the visa holders are not used to replace U.S. workers with "cheaper foreign labor."

Some commenters wrote that DHS's proposed weighting toward more skilled workers directly conflicts with the statutory definition of "specialty occupation," which is defined in terms of a minimum requirement of a bachelor's degree for entry into the occupation, and does not depend on an experience requirement. One of the commenters said that DHS has no authority to enact its policy preference for admitting H-1B workers based on their experience as a deciding factor in selecting their registrations as it is contrary to the statutory definition.

Another commenter wrote that the NPRM is "unjustified" in its citation to 6 U.S.C. 111(b)(1)(E) as one of its legal bases. The commenter asserted that this provision was intended as a constraint on DHS's regulatory power, and that it obligates DHS "to avoid initiatives that would weaken economic stability or burden lawful sectors of American commerce." The commenter suggested that the proposed rule conflicts with this limitation by diminishing, rather than safeguarding, the nation's overall economic

security. The commenter stated that because the rule "constrains U.S. employers' ability to access specialized talent," it undermines the statutory mission Congress assigned to DHS.

Response: DHS disagrees with the commenters' assertions that the weighted selection process would violate the INA or that DHS lacks the statutory authority to implement a weighted selection process. The statute is silent as to how USCIS must select H-1B petitions, or registrations, to be filed toward the numerical allocations in years of excess demand; the term "filed" as used in INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), is ambiguous;[58] and these changes are reasonable and within DHS's general authority. *See* INA secs. 103(a), 214(a), and (c)(1), 8 U.S.C. 1103(a), 1184(a), and (c)(1).

While the current random selection of petitions or registrations is reasonable, DHS believes it is neither the optimal, nor the exclusive method of selecting registrations or petitions toward the numerical allocations when more registrations or petitions, as applicable, are simultaneously submitted than projected as needed to reach the numerical allocations. Pure randomization does not serve the ends of the H-1B program or congressional intent to help U.S. employers fill labor shortages in positions requiring highly skilled workers.[59] Under the current random selection process, in every fiscal year from FY 2019 through FY 2024, petitions for beneficiaries at wage level III and wage level IV were the least represented among all wage levels in cap-subject H-1B filings, both under the regular cap and the advanced-degree exemption.[60]

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[58] *See Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156, 1170 (D. Or. 2017).

[59] *See* H.R. Rep. 101-723(I) (1990), as reprinted in 1990 U.S.C.C.A.N. 6710, 6721 (stating "The U.S. labor market is now faced with two problems that immigration policy can help to correct. The first is the need of American business for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found and the need for other workers to meet specific labor shortages.").

[60] USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY-2018-FY-2024. DOL data downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance (last visited Nov. 24, 2025).

Contrary to commenters' assertions, the weighted selection process does not preclude access to skilled workers at the lower wage levels or diminish, rather than safeguard, the nation's overall economic security. Congress imposed an annual numerical limitation on the number of foreign workers who may be issued an initial H-1B visa or otherwise provided initial H-1B status. *See* INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A). Congress, however, "left to the discretion of USCIS how to handle simultaneous submissions" and "USCIS has discretion to decide how best to order those petitions."[61] As DHS explained in the preamble to the proposed rule (90 FR 45991 (Sept. 24, 2025)), by engaging in a wage-level-based weighting of registrations for unique beneficiaries, DHS will better ensure that initial H-1B visas and status grants would more likely go to the highest skilled or highest paid beneficiaries, while not effectively precluding those at lower wage levels. Facilitating the admission of higher-skilled workers "would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market," consistent with the goals of the H-1B program and will help to safeguard the nation's overall economic security.[62]

3. Previous H-1B Rulemakings and Related Court Cases

Comment: A commenter wrote that DHS attempted to make a similar change in 2021 and it was vacated by a Federal court in *Chamber of Commerce v. DHS*, No. 4:20-cv-07331, 2021 WL 4198518 (N.D. Cal. Sept. 15, 2021), adding that DHS has not explained how the approach described in the NPRM would avoid the same legal defects of that previous rule. Another commenter similarly stated that wage-based selection

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[61] *See Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156, 1176 (D. Or. 2017).

[62] *See* Muzaffar Chishti & Stephen Yale-Loehr, Migration Policy Institute, The Immigration Act of 1990: Unfinished Business a Quarter-Century Later (July 2016), https://www.migrationpolicy.org/sites/default/files/publications/1990-Act_2016_FINAL.pdf ("Sponsors of [the Immigration Act of 1990, which created the H-1B program as it exists today,] believed that facilitating the admission of higher-skilled immigrants would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market.").

policies have faced legal challenges in the past, raising significant questions about the statutory authority for such a weighted selection process. Commenters stated that this rule would similarly likely face legal challenges. One commenter said that DHS should withdraw the rule to avoid litigation.

Some commenters wrote that while the *Walker Macy* court decision upheld USCIS' use of a random lottery for simultaneously submitted petitions, it does not support introducing wage-based preference as a new requirement to determine eligibility or priority. Some commenters wrote that the proposed rule improperly cites *Liu v. Mayorkas*.[63] One of these commenters asserted that *Liu* "does not support the agency's proposed imposition of a thumb-on-the-scale lottery system based on wage levels," and in any case cannot be relied upon because it is a single, nonbinding district court decision and not controlling law. The commenter added that the court described the lottery as an antecedent measure that did not replace the statutory requirement of chronological allocation; rather, it was a preliminary step taken before the chronological allocation process begins. Another commenter reasoned that *Liu v. Mayorkas* only addressed the narrow challenge to online registration system implementation and the prevention of multiple filings, and therefore that using *Liu* to justify the significant shift to an unequal, wage-based weighted lottery expands beyond precedent and what the INA mandates. The commenter added that *Liu* specifically warned that agency discretion must adhere to statutory language and purpose.

One commenter asserted that this rulemaking represents a "premature departure" from the 2024 final rule. 89 FR 7456 (Feb. 2, 2024). The commenter noted that the 2024 final rule was designed to reduce "gaming" the system to ensure that each beneficiary has the same chance of selection and said that it is premature to change that framework before evaluating outcomes across the FY 2025 and FY 2026 cycles.

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[63] 588 F. Supp. 3d 43 (D.D.C. 2022).

Response: DHS notes that the court in *Chamber of Commerce v. DHS*, No. 4:20-cv-07331, 2021 WL 4198518 (N.D. Cal. Sept. 15, 2021), did not reach the issue of DHS's statutory interpretation and the substantive merits of the 2021 H-1B Selection Final Rule. Because the court did not reach the substantive merits of that rulemaking, DHS disagrees with the commenter's assertion that the 2021 H-1B Selection Final Rule was inconsistent with DHS's statutory authority or that DHS has not sufficiently explained how this current rulemaking is consistent with DHS's statutory authority.

DHS also disagrees with the commenters' assertions that the weighted selection process would violate the INA or that DHS lacks the statutory authority to implement a weighted selection process. The statute is silent as to how USCIS must select H-1B petitions, or registrations, to be filed toward the numerical allocations in years of excess demand; the term "filed" as used in INA sec. 214(g)(3), 8 U.S.C. 1184(g)(3), is ambiguous;[64] and these changes are reasonable and within DHS's general authority. *See* INA secs. 103(a), 214(a), and (c)(1), 8 U.S.C. 1103(a), 1184(a), and (c)(1).

The Secretary has broad authority to administer and enforce the INA, establish such regulations as the Secretary deems necessary for carrying out such authority, and to prescribe the time and conditions under which an alien may be admitted to the United States as a nonimmigrant and how an importing employer may petition for nonimmigrant workers. *See* INA secs. 103(a), 214(a)(1), and (c)(1), 8 U.S.C. 1103(a), 1184(a)(1), and (c)(1). Such authority includes prescribing rules to fill statutory gaps.[65]

DHS disagrees with the commenters' assertion that *Liu* was improperly cited in the proposed rule. The *Liu* decision, while not a binding precedential decision, is

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[64] *See Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156, 1170 (D. Or. 2017).

[65] *See Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 395 (2024) (explaining that a statute's meaning may be that the agency is authorized to exercise a degree of discretion and empowered to prescribe rules to fill in statutory gaps based on "reasoned decision making"); *see also Liu* v. *Mayorkas,* 588 F. Supp. 3d 43, 55 (D.D.C. 2022) (finding that the registration requirement does not violate the INA, is not ultra vires, and that registration is merely "an antecedent procedural step to be eligible to file an H-1B cap[-subject] petition"); *Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156 (D. Or. 2017).

persuasive authority pertaining to DHS's authority to fill the statutory silence and implement a registration requirement.[66] The court in *Liu* correctly recognized that registration is not a petition, but rather an antecedent procedural step.[67] Creation of an antecedent registration requirement, and random selection of registrations or petitions, as applicable, are reasonable gap filling regulations just as the current rulemaking is a reasonable gap filling regulation consistent with the Secretary's broad statutory authority.

DHS also disagrees with the commenter's assertion that it is premature to implement a new selection process before at least a couple of years have passed since the implementation of the beneficiary-centric selection process. DHS notes that this final rule builds on, and does not replace, the changes made by the final rule implementing the beneficiary-centric selection process.[68] DHS also notes that the gaming addressed by the final rule implementing the beneficiary-centric selection process was the submission of multiple registrations for the same beneficiary by companies that were working together to unfairly increase a beneficiary's chance of selection. That is a different issue than what this final rule will address. This final rule builds on the 2024 final rule to continue selecting beneficiaries, such that the selection process remains beneficiary-centric rather than registration-centric, but weights each unique beneficiary in the registration selection process generally based on the corresponding wage level that the proffered wage equals or exceeds. Because this final rule builds on the 2024 final rule, DHS disagrees with the commenter's assertion that DHS should have waited longer before making additional changes to the H-1B cap selection process.

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[66] *See Liu v. Mayorkas*, 588 F. Supp. 3d 43, 55 (D.D.C. 2022) (explaining that the registration requirement "makes sense, is inherently reasonable, and saves the agency and employers time and money.").
[67] *Id*. (finding that the registration requirement does not violate the INA, is not ultra vires, and that registration is merely "an antecedent procedural step to be eligible to file an H-1B cap[-subject] petition").
[68] *See* 90 FR at 45993 ("With regard to selection of unique beneficiaries and the registrations submitted on their behalf, because the beneficiary-centric selection process is needed to prevent unscrupulous actors from unfairly increasing the odds that a beneficiary would be selected, DHS proposes to implement a wage-based selection process that would operate in conjunction with the existing beneficiary-centric selection process.").

4. DHS Background and Justification for the Rule

Comment: Some commenters expressed support for DHS's justifications for the proposed rule and reasoned that the H-1B program does not bring in high-skilled workers and is instead used to replace U.S. workers at lower costs. A commenter similarly expressed support for DHS's justifications, concluding that the current random lottery allows for program abuse and has become the primary mechanism through which the H-1B program fails to meet its core mission. Another commenter acknowledged that given the high volume of H-1B applications USCIS simultaneously receives exceeding the cap, it is impossible to determine the order in which they were filed. The commenter stated that because the original statute cannot be adhered to, DHS's rationale in proposing an updated selection process is reasonable.

Response: As noted in the H-1B Proclamation, the H-1B program has been deliberately exploited to replace, rather than supplement, U.S. workers with lower-paid, lower-skilled labor. 90 FR 46027 (Sept. 24, 2025). The large-scale replacement of U.S. workers through systemic abuse of the program has undermined both our economic and national security. 90 FR 46027 (Sept. 24, 2025). The current random selection process has contributed to the ongoing exploitation of the H-1B program to benefit certain companies in certain sectors, while crowding out other companies and legitimate job seekers. For this primary reason, DHS is implementing a weighted selection process that would generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels, to better serve the congressional intent for the H-1B program.

Comment: Some commenters opposed the rule, claiming that the proposed rule is based on the false premise that foreign workers displace or take away job opportunities from U.S. workers and depress wages. For instance, some commenters cited statistics highlighting the positive impacts H-1B workers make to the economy and showing that

H-1B workers make wages above the median for U.S. workers. Likewise, a commenter said that the NPRM ignores studies that convincingly show that workers with H-1B visas earn more than similarly situated U.S. workers. The commenter added that the proposed rule fails to show why it is necessary to prioritize more-senior workers given that the average H-1B visa holder is already earning more than similar U.S. workers, particularly if doing so risks eroding many of the economic benefits of the H-1B program. Another commenter said that entry level roles are not displacing U.S. workers and that removing international graduates from the applicant pool simply excludes equally qualified candidates.

Response: DHS disagrees with the commenters. As an initial matter, DHS does not dispute the general premise that H-1B workers can make positive contributions to the U.S. economy. DHS sees the value that highly skilled H-1B workers can bring to the economy, provided that the H-1B program functions as originally intended, which is to help employers bring temporary workers into the United States to perform additive, high-skilled functions to supplement the U.S. workforce and to help the U.S. economy.

However, the H-1B program is not functioning as intended. Instead, it is being exploited on a large scale to bring in lower-paid, lower-skilled workers. As noted in the H-1B Proclamation the H-1B program has been deliberately exploited to replace, rather than supplement, U.S. workers with lower-paid, lower-skilled labor. 90 FR 46027 (Sept. 24, 2025). The H-1B Proclamation also indicated that many U.S. tech companies have laid off their qualified and highly skilled U.S. workers and simultaneously hired thousands of H-1B workers, and some even forced their U.S. workers to train the foreign workers. 90 FR 46027 (Sept. 24, 2025). Further, unemployment among recent computer science and computer engineering graduates has reached some of the highest levels in the country and has been exacerbated by abuse of the H-1B visa program. 90 FR 46027 (Sept. 24, 2025). This rule is an important step to reversing the abuse of the H-1B

program. This rule will disincentivize the existing widespread use of the H-1B program to fill lower paid or lower skilled positions. Instead, U.S. employers that might have petitioned for cap-subject H-1B workers to fill relatively lower-paid, lower-skilled positions, may be incentivized to hire available and qualified U.S. workers for those positions.

Comment: Many commenters disputed the premise that wage is a proxy for experience, skill, or education. Several commenters stated that the proposed rule is based on the false premise that salary alone equates with value and individuals who earn more in their profession contribute more to the economy. Some commenters said that DHS failed to provide empirical support for its core assumptions—that higher wage levels reliably correlate with higher skills, productivity, or greater economic benefit to the United States, or that some industries paying higher wages are more valuable to the economy and society than other industries that offer more modest salaries. Commenters emphasized that wage levels do not accurately reflect skill, innovation, potential, economic contributions, contributions to underserved communities, or other contributions. One commenter noted that wage levels do not necessarily reflect skill or economic contribution and cited multiple studies that demonstrate that using wage level as a proxy for skill level lacks empirical evidence and may harm both employers and workers. Some commenters remarked that wages are impacted by a variety of factors not taken into account in the rule, including different industries, market, employer size, or geography, and it is an unreliable proxy for skill and professional level.

A commenter said level I reflects standard entry-level positions and that removing the level would contradict "the government's own system and unfairly redefines "specialty occupation" as something only senior employees can fill." Another commenter voiced concern that the proposed rule would significantly skew H-1B lottery outcomes and urged DHS to reconsider its impact on lower-wage applicants.

Response: DHS disagrees with these comments and believes that salary generally is a reasonable proxy for skill level. As stated in the NPRM, in most cases where the proffered wage equals or exceeds the prevailing wage, a prevailing wage rate reflecting a higher wage level is a reasonable proxy for the higher level of skill required for the position, based on the way prevailing wage determinations are made. DHS believes that an employer who offers a higher wage than required by the prevailing wage level does so because that higher wage is a clear reflection of the beneficiary's value to the employer, which, even if not related to the position's skill level *per se,* reflects the unique qualities the beneficiary possesses. DHS believes that the rule will incentivize an employer to proffer a higher wage to increase their chances of selection, but that the employer only would do so if it was in their economic interest to do so based on the beneficiary's skill level and relative value to the employer.

DHS acknowledges that aliens may be offered salaries at level I prevailing wages to work in specialty occupations and may be eligible for H-1B status. DHS is not removing the possibility of selection for registrations for positions paid at level I wages through this rulemaking. However, DHS also believes that, in years of demand exceeding the annual limits for initial H-1B visas or status grants subject to the numerical allocations, the current process of purely random selection does not optimally serve Congress' purpose for the H-1B program. Instead, in years of excess demand, selection of H-1B cap-subject petitions generally on the basis of the OEWS prevailing wage level that the proffered wage equals or exceeds, which generally correlates to higher skills, is more consistent with the purpose of the H-1B program and with the administration's goal of improving policies such that H-1B classification is more likely to be awarded to petitioners seeking to employ higher-skilled and higher-paid beneficiaries. The purpose of this rule is to implement a weighted selection process that will generally favor the

allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels.

Comment: Multiple commenters stated that wage levels are inadequate to compare workers across occupations and that wage levels are intended to ensure fair pay within occupation and area of intended employment. Some commenters stated that wage levels are based on experience, education, and supervisory level within a given occupation and geographic location, while other commenters stated that wage levels are more reflective of seniority and career progression rather than skill. A commenter similarly indicated that the prevailing wage levels were not intended to be used in this way, but rather meant to ensure that employing foreign workers does not adversely impact the wages and working conditions of U.S. workers, and are used by DOL to characterize career progression.

Some commenters stated opposition to the rule, reasoning that it would favor lower-skilled and lower-paid positions, contrary to its stated goal of prioritizing higher-skilled, higher-paid workers. A commenter referenced how prevailing wage levels are calculated based on the average wage for similarly employed workers in a specific occupation and location, which could advantage occupations with lower entry-level requirements. Similarly, a commenter stated that the use of wage levels would prioritize lower-skilled, lower-paid workers, undermining the purpose of the rule, which is to prioritize top talent with scarce and in-demand skills. Additionally, the commenter stated that while wage levels correlate well with wages within a specific occupation, wages between occupations can vary significantly, which was not taken into account in the proposed rule, and provided several examples to illustrate this point. Some commenters stated the proposed selection process could favor seniority in lower-paid occupations over high-wage, high-skill roles in other fields, and is not supported by underlying statute, DOL regulations, guidance, or “the government’s own data.”

While voicing concern about the use of prevailing wage levels in the proposed weighted selection process, a commenter stated that applying wage levels across industries was "inappropriate," as DOL's prevailing wage system accounts for factors, such as job duties, education, experience, and location, which vary significantly by occupation. The commenter remarked that high-skilled roles—such as physicians, lawyers, and professors—may still fall under level I wages due to standard entry requirements, while other occupations with lower educational thresholds could qualify for higher wage levels. The commenter reasoned that this mismatch could lead to inequitable outcomes, where individuals in lower-paid occupations might receive more chances in the lottery than those in higher-skilled, higher-paid roles.

Multiple commenters discussed concerns in associating lower wage levels with low skill work, noting that more advanced occupations with more rigorous job requirements may be assigned lower wage levels compared to less advanced occupations with lower job requirements. For example, some commenters said that a specialized surgeon earning $300,000 would be certified as a level I and a Ph.D. working at a high tech company earning $280,000 would be certified at a level II, whereas an acupuncturist earning $41,600 is considered level III and a landscape architect with a $36,000 salary is certified as level IV. Another commenter noted that a Master's degree requirement for a Job Zone 4 occupation can result in a level II wage while the same requirement for a Job Zone 5 occupation can result in a level I wage, despite the Job Zone 5 position being more advanced. Another commenter similarly noted that employees in occupations with a higher Specific Vocational Preparation (SVP) and higher levels of compensation may be assigned lower prevailing wage levels than occupations with a lower SVP and said that a position requiring a doctorate and 2-4 years of experience may have a prevailing wage level I that is set at $200,000 per year, whereas a position in an occupation that has an entry level requirement of a Bachelor's degree and 0-2 years of experience may yield a

salary of $150,000 per year at prevailing wage level 3. Another commented noted the different wage levels resulting from differing job requirements of cardiologists as compared to civil engineers.

Response: DHS disagrees that wage levels are inadequate to compare workers across occupations. DHS is aware that different occupational classifications carry differing position and wage requirements and that wage levels reflect a comparison within an occupation, rather than across occupations. DHS also recognizes that higher wage levels may correspond with seniority, but this does not negate the fact that they also reflect higher skills required for the position.

As noted in the NPRM, DHS believes that salary generally is a reasonable proxy for skill level.[69] DHS data shows a correlation between higher salaries and higher skill and wage levels.[70] 90 FR 45986, 45990 (Sept. 24, 2025). As a position's required skill level increases relative to the occupation, so, too, may the wage, and necessarily, the corresponding prevailing wage.[71] A proffered wage that corresponds to the prevailing wage rate reflecting a higher wage level is generally a reasonable proxy for the higher level of skill of the alien or value placed by the employer on the alien's value to the employer. DHS recognizes, however, that some employers may choose to offer a higher

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[69] *See* DOL, ETA, "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program," 76 FR 3452, 3453 (Jan. 19, 2011) (it is a "largely self-evident proposition that workers in occupations that require sophisticated skills and training receive higher wages based on those skills."); Daniel Costa & Ron Hira, Economic Policy Institute, "H-1B Visas and Prevailing Wage Level" (May 4, 2020), *https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels*. ("Specialized skills should command high wages; such skills are typically a function of inherent capability, education level, and experience. It would be reasonable to expect that these workers should receive wages higher than the median wage.").

[70] For example, in Computer and Mathematical Occupations, the FY 2024 national median salary of H-1B workers for Level I was $89,253; for Level II was $106,000; for Level III was $140,000; and for Level IV was $163,257. USCIS OPQ, SAS PME C3 Consolidated, VIBE, DOL OFLC TLC Disclosure Data, queried 4/2025, TRK #17347. This example illustrates that median wages generally increase with the increase to the LCA wage level. As LCA wage levels increase to account for a higher-than-usual skill or other job requirements, the data show the correlation between higher median wages and higher skill and wage levels.

[71] DOL, ETA, Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (last modified Nov. 2009), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf (noting that a wage level increase may be warranted if a position's requirements indicate skills that are beyond those of an entry level worker).

proffered wage to a certain beneficiary to be more competitive in the H-1B selection process.

Regarding the occupational examples provided by commenters, DHS notes that the purpose of this rule is not to prioritize certain occupations or industries over others. The purpose of this rule is to implement the numerical cap in a manner that generally favors the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels and in all eligible occupations.

Comment: Some commenters criticized the proposed rule as lacking clarity and justification, specifically stating that the rule does not clearly explain how "wages" will be defined or measured, whether future positions are considered, how wage amendments after approval will be handled, how wage levels will be set or updated, or how part-time versus full-time work will be treated. A commenter stated that the rule lacks necessary specificity, as it fails to define key terms (e.g., how "wage" is computed for remote work and for split worksites), and it offers no credible description of enforcement mechanisms to prevent wage manipulation, post-selection wage reductions, or worksite misreporting. The commenter concluded that this vagueness would invite both litigation and systemic abuse.

Response: DHS disagrees with these commenters' assertions that the rule lacks clarity and justification and disputes the claims made by these commenters. DOL regulations define payment of wages for purposes of satisfying the H-1B required wage. *See* 20 CFR 655.731(c)(2). This rule does not change how wages are defined or measured, including how wages are computed for remote work and split worksites. It is unclear what the commenter is referring to when stating that the rule does not clearly explain "whether future positions are considered," but notes that at the time a registration is submitted, each prospective petitioner is required to sign an attestation, under penalty

of perjury, that the registration reflects a legitimate job offer (among other attestations). Regarding the comment claiming a lack of clarity around how wage amendments after approval will be handled, DHS refers to new 8 CFR 214.2(h)(10)(iii), finalized in this rule, which allows USCIS to deny a subsequent new or amended petition filed by the petitioner, or a related entity, on behalf of the same beneficiary if USCIS were to determine that the filing of the new or amended petition is part of the petitioner's attempt to unfairly increase the odds of selection during the registration (or petition, if applicable) selection process, such as by reducing the proffered wage to an amount that would be equivalent to a lower wage level than that indicated on the original registration or petition. Furthermore, DHS does not set or update wage levels and did not propose to do so through this rule. Finally, the adjudication of part-time employment is not relevant in the selection process.

5. Concerns the Rule is Arbitrary and Capricious

Comment: Some commenters raised concerns that the proposed weighted selection process's core assumption – that higher salaries correlate with economic value, innovation potential, and long-term contributions to U.S. competitiveness – is arbitrary and capricious. A commenter stated that treating salary as a universal proxy for skill across occupations and regions is insufficiently substantiated. The commenter said the change effectively converts a beneficiary-centric lottery into a salary screen, raising "arbitrary and capricious" risk and disregarding reliance interests of diverse stakeholders. A commenter stated that every agency has a constitutional duty under the Administrative Procedure Act (APA) to act in good faith, to prevent arbitrary discrimination, and to uphold the rule of law, and this rule fails all three tests. Another commenter noted that OEWS updates trail the market, so similar offers can receive different weights based on timing alone. The commenter concluded that elevating salary to the "decisive lever,"

without robust evidence that it consistently tracks skill across occupations and regions, raises serious APA concerns.

One commenter said that the proposed rule is arbitrary and capricious because it overlooks the impact on H-1B petitions for essential roles in healthcare, education, and other sectors reliant on early-career professionals. Citing *Motor Vehicle Mfrs. Ass'n v. State Farm*, the commenter said DHS failed to consider a key aspect of the issue, resulting in a policy that harms U.S. businesses and contradicts the Administration's goals. Other commenters stated that the proposed rule was arbitrary and capricious because it failed to address the impact on small and mid-sized employers.

Response: Based on its comprehensive review of the submitted comments and available evidence, DHS has concluded that, by changing the selection process from a purely random lottery selection to a weighted selection process generally based on the OEWS prevailing wage level that the proffered wage equals or exceeds, DHS will implement the statute more faithfully to its dominant legislative purpose. DHS disagrees with the claim that this rule is arbitrary or capricious, or that it fails to account for potential negative impacts on certain types of H-1B positions and industries. First, DHS reiterates that the new weighted selection process will neither exclude nor "effectively exclude" H-1B visa petitions for level I wages. Second, DHS has determined, after considering possible negative impacts, that pure randomization does not serve the ends of the H-1B program or congressional intent to help U.S. employers fill labor shortages in positions requiring highly skilled workers. DHS believes that the potential costs of engaging in a wage-level-based weighting of registrations for unique beneficiaries are outweighed by the benefits of better ensuring that initial H-1B visas and status grants would more likely go to the highest skilled or highest paid beneficiaries, while not effectively precluding those at lower wage levels.

Comment: A commenter said that the proposed rule "represents a substantial policy shift" from when the agency said in 2019 that prioritizing H-1B petitions beyond degree-based criteria "would require statutory change." The commenter noted that under the APA, agencies are expected to provide a reasoned explanation when changing interpretations. The commenter claimed DHS did not do so, and that DHS's change in interpretation is "[w]ithout a compelling factual record or new statutory mandate" and risks being found arbitrary and capricious. Another commenter said that the proposed rule disregards established reliance interests for certain industries and fails to provide a rational basis for its changes, rendering it legally unsupported and arbitrary.

Response: DHS recognizes that it considered the issue of cap selection by wage level in 2019 and concluded at that time that prioritization by wage level or other bases would require statutory change. DHS acknowledged that prior statement in footnote 20 in the preamble to the proposed rule. *See* 90 FR 45986, 45990 (Sept. 24, 2025). DHS reconsidered the analysis as far back as 2020, and again in the context of this rulemaking, and determined that selection by wage level is consistent with its broad statutory authority and fills a statutory gap in a way that is consistent with a key goal of the program.

DHS recognizes that some employers may have relied on a random selection process to prepare for the possibility that the beneficiary(ies) the employer registered for might be selected. DHS, however, disagrees with any assertion that a purely random selection process engenders strong reliance interests or that such reliance interests outweigh the benefit of a weighted selection process that better protects the wages, working conditions, and job opportunities of U.S. workers.

DHS disagrees with the assertion that it did not provide a rational basis for the rule. As explained in the preamble to the proposed rule, while the current random selection of petitions or registrations is reasonable, DHS believes it is neither the optimal,

nor the exclusive method of selecting registrations or petitions toward the numerical allocations when more registrations or petitions, as applicable, are simultaneously submitted than projected as needed to reach the numerical allocations. *See* 90 FR 45986, 45990 (Sept. 24, 2025). Pure randomization does not serve the ends of the H-1B program or congressional intent to help U.S. employers fill labor shortages in positions requiring highly skilled workers.[72] Under the current random selection process, in every fiscal year from FY 2019 through FY 2024, petitions for beneficiaries at wage level III and wage level IV were the least represented among all wage levels in cap-subject H-1B filings, both under the regular cap and the advanced-degree exemption.[73]

As DHS explained in the preamble to the proposed rule, by engaging in a wage-level-based weighting of registrations for unique beneficiaries, DHS will better ensure that initial H-1B visas and status grants would more likely go to the highest skilled or highest paid beneficiaries, while not effectively precluding those at lower wage levels. *See* 90 FR 45986, 45991 (Sept. 24, 2025). Facilitating the admission of higher skilled workers "would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market," consistent with the goals of the H-1B program and will help to safeguard the nation's overall economic security.[74]

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[72] *See* H.R. Rep. 101-723(I) (1990), as reprinted in 1990 U.S.C.C.A.N. 6710, 6721 (stating "The U.S. labor market is now faced with two problems that immigration policy can help to correct. The first is the need of American business for highly skilled, specially trained personnel to fill increasingly sophisticated jobs for which domestic personnel cannot be found and the need for other workers to meet specific labor shortages.").

[73] USCIS OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY-2018-FY-2024. DOL data downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance (last visited Nov. 24, 2025).

[74] *See* Muzaffar Chishti & Stephen Yale-Loehr, Migration Policy Institute, The Immigration Act of 1990: Unfinished Business a Quarter-Century Later (July 2016), https://www.migrationpolicy.org/sites/default/files/publications/1990-Act_2016_FINAL.pdf ("Sponsors of [the Immigration Act of 1990, which created the H-1B program as it exists today,] believed that facilitating the admission of higher-skilled immigrants would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market.").

Comment: A commenter alleged that USCIS failed to explain why it is changing direction based on its previous findings that foreign nationals employed in STEM fields are important for businesses and the economic development of the United States. *See* 81 FR 13040, 13047-48 (Mar. 11, 2016) (cap gap STEM OPT rule). The commenter concluded that USCIS failed to explain or justify the reasons for its "reverse in course" in light of those prior findings and policy determinations. The commenter also claimed that DHS failed to consider the related reliance interests of employers in employing recent international student graduates. *See Dep't of Homeland Sec. v. Regents of the Univ. of Ca*., 591 U.S. 1, 30 (2020).

Response: DHS disagrees with the commenter's assertion that statements made nearly one decade ago in the context of a rulemaking pertaining to F-1 nonimmigrants indicate a change of course in the H-1B nonimmigrant context. DHS notes that this final rule, which pertains to the selection of beneficiaries in the H-1B cap selection process, does not preclude employers from registering H-1B beneficiaries with STEM degrees in the H-1B cap and, if selected, from filing a petition on their behalf.

As DHS explained in the preamble to the proposed rule, by engaging in a wage-level-based weighting of registrations for unique beneficiaries, DHS will better ensure that initial H-1B visas and status grants would more likely go to the highest skilled or highest paid beneficiaries, while not effectively precluding those at lower wage levels. *See* 90 FR 45986, 45991 (Sept. 24, 2025). As explained previously in response to other comments, pure randomization does not serve the ends of the H-1B program or congressional intent to help U.S. employers fill labor shortages in positions requiring highly skilled workers, regardless of whether those positions are in STEM related fields. DHS recognizes that some employers may have relied on a purely random selection process to prepare for the possibility that the beneficiary(ies) the employer registered for might be selected. DHS, however, disagrees with any assertion that a purely random

selection process engenders strong reliance interests or that such reliance interests outweigh the benefit of a weighted selection process that better protects the wages, working conditions, and job opportunities of U.S. workers, including those in STEM related positions.

6. Other Legal Comments

Comment: Some commenters wrote that terminating or changing the lottery system has broad political and economic consequences that implicates the major questions doctrine, so clear congressional authority is required to change the system. Another commenter said that the rule implicates the major questions doctrine, explaining that when an agency claims authority to make decisions of "vast economic and political significance," courts require clear congressional authorization *West Virginia v. EPA*, 597 U.S. 697, 723-4 (2022). The commenter added that fundamentally restructuring how H-1B visas are allocated constitutes a major question and that the INA's directive that visas be issued "in the order" petitions are filed does not clearly authorize DHS to create a wage-based preference system.

Response: The major questions doctrine, as articulated in *West Virginia v. EPA*, applies in "extraordinary cases" where an agency claims a "transformative expansion" of its regulatory authority without clear congressional authorization. However, the selection process detailed in this rule does not trigger the major questions doctrine.

This rule deals with the Secretary's administration and enforcement of the H-1B numerical allocations—a topic that DHS has long regulated, including via the random selection process that this rule will replace. Specifically, and as discussed elsewhere in this rule, the Secretary has broad authority to administer and enforce the INA, establish such regulations as the Secretary deems necessary for carrying out such authority, and to prescribe the time and conditions under which an alien may be admitted to the United States as a nonimmigrant and how an importing employer may petition for nonimmigrant

workers. *See* INA secs. 103(a), 214(a)(1), and (c)(1), 8 U.S.C. 1103(a), 1184(a)(1), and (c)(1). Such authority includes prescribing rules to fill statutory gaps, which DHS has done for years.[75]

In *West Virginia v. EPA*, the Court found that the U.S. Environmental Protection Agency (EPA) lacked clear congressional authorization to implement a generation-shifting approach to regulating power plant emissions under the Clean Air Act. By contrast, DHS's authority under the INA and the HSA is broad and clear and falls under DHS's traditional role. Unlike the EPA's Clean Power Plan, which sought to restructure the nation's energy grid—a task far outside the EPA's traditional role—DHS's wage-based selection process is well within its traditional role of administering and regulating the H-1B visa program. DHS has long exercised authority over the selection process for H-1B petitions, and this rule simply refines the selection methodology to prioritize higher paid and higher skilled workers. This is not a novel or transformative assertion of authority but rather a refinement of an existing regulatory function.

In addition, in *West Virginia v. EPA*, the Court emphasized that the major questions doctrine applies when an agency's action is inconsistent with Congress's broader design. Here, the wage-based weighted selection process aligns with Congress's intent in the INA to protect the wages, working conditions, and job opportunities of U.S. workers by ensuring that H-1B workers are not used to undercut domestic wages. *See* INA sec. 212(n), 8 U.S.C. 1182(n). The INA explicitly ties H-1B eligibility to wage requirements contained in the LCA process, which requires employers to pay the greater of the actual or the prevailing wage to H-1B workers. The INA also mandates the computation of prevailing wage levels. *See* INA sec. 212(p), 8 U.S.C. 1182(p). This rule

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[75] *See Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369, 395 (2024) (explaining that a statute's meaning may be that the agency is authorized to exercise a degree of discretion and empowered to prescribe rules to fill in statutory gaps based on "reasoned decision making"); *see also Liu* v. *Mayorkas,* 588 F. Supp. 3d 43, 55 (D.D.C. 2022) (finding that the registration requirement does not violate the INA, is not ultra vires, and that registration is merely "an antecedent procedural step to be eligible to file an H-1B cap[-subject] petition"); *Walker Macy LLC* v. *USCIS,* 243 F. Supp. 3d 1156 (D. Or. 2017).

builds on this statutory framework by prioritizing higher-wage workers in the selection process, thereby furthering Congress's goal of protecting the wages, working conditions, and job opportunities of U.S. workers.

The Court in *West Virginia* was concerned with the EPA's assertion of authority to "substantially restructure the American energy market" under a "long-extant statute." The wage-based H-1B weighted selection process does not involve a comparable expansion of DHS's authority. DHS is not asserting new or unheralded powers; it is merely adjusting the methodology for selecting H-1B registrations (or petitions) in a way that is consistent with its statutory mandate and historical practice. The rule does not create a new regulatory regime or fundamentally alter the structure of the H-1B program.

The majority in *West Virginia* identified several factors that might trigger the major questions doctrine, including whether the agency action involves a matter of "vast economic and political significance" or represents an "unheralded power." None of those factors apply here. The wage-based weighted selection process does not have vast economic or political significance; it affects only the method by which DHS selects H-1B registrations (or petitions) under the statutory cap. While the rule may be significant to those U.S. workers who have had to compete with lower-paid H-1B workers who have dominated the current random selection process, and will help to attract the "best and brightest" to the United States by increasing the chance of selection for higher-skilled, higher-paid aliens, the rule's overall economic impact is not vast. And this rule does not assert a new power; DHS has long exercised authority over the H-1B selection process and has previously modified that process through rulemakings.

While the wage-based H-1B selection process is economically significant under Executive Order (E.O.) 12866, it does not rise to the level of "vast economic and political significance" required to trigger the major questions doctrine. The threshold for economic significance under E.O. 12866 is relatively low ($100 million annual impact), whereas

the major questions doctrine requires a much higher level of economic and political impact. In *West Virginia v. EPA*, the Court applied the doctrine to the EPA's Clean Power Plan because it sought to restructure the entire energy grid—a matter of extraordinary economic and political significance. By contrast, DHS's wage-based H-1B weighted selection process does not involve a comparable restructuring of the economy or labor market. The rule affects only the selection methodology for H-1B registrations (or petitions), a discrete regulatory function within DHS's traditional authority. The wage-based weighted selection process is narrowly tailored to incentivize employers seeking initial classification of H-1B cap-subject aliens to offer higher wages, or to petition for positions requiring higher skills and higher-skilled aliens, that are commensurate with higher wage levels. It affects the odds of selection for a program that has long been over-subscribed and under which selection was previously random and never guaranteed. It does not fundamentally alter the structure of the H-1B program or the broader labor market. While the rule may shift the composition of H-1B workers toward higher-wage positions, it does not impose new substantive requirements on employers or workers beyond the existing statutory framework.

Comment: A commenter wrote that DHS has not demonstrated that it has considered and ruled out alternative methods to accomplish its goals, which is required by the APA. The commenter wrote that "[t]he only other means DHS appears to have considered is the 'ranking' model the agency pursued in 2020, which would have had even more drastic impacts on early-career talent, and was vacated in court and later withdrawn."

Some commenters expressed concern that the proposed rule could make the program more susceptible to legal challenges. One commenter stated that legal challenges regarding statutory authority for the weighted selection approach would be likely, and litigation would leave employers with lingering uncertainty about whether the process

might "change midstream." The commenter wrote that "[e]mployers begin planning months in advance of the H-1B registration window, and it is critical for businesses to be able to fulfill talent needs in their operations with confidence that the rules will not change midstream. Expected litigation could cause companies to lose global talent to other countries, especially in the midst of competition for dominance in AI and other critical technologies."

Response: DHS agrees that it discussed in the preamble to the NPRM the alternative of proposing the methodology from the 2020 H-1B Selection NPRM and explained why it instead chose to propose a weighted selection process. *See* 90 FR 45986, 46013 (Sept. 24, 2025). DHS also requested potential alternatives to the proposed weighted selection process. 90 FR at 46013. The commenter, however, did not identify alternatives for DHS to consider and instead asserted that the statute is unambiguous and that DHS is not permitted to establish a prioritization scheme through rulemaking. (See subsequent Section III F.1 *Alternatives to the Proposed Weighted Selection Process* for DHS' consideration of alternatives suggested by other commenters.)

DHS disagrees with the commenter's assertion that DHS should not finalize the rule because it may lead to litigation challenging the rule and uncertainty as to the cap selection process while litigation is pending. DHS does not believe that the threat of future litigation, and speculation as to the ultimate outcome of any future litigation pertaining to the final rule, is a reasonable basis not to finalize a rule that will improve the administration of the H-1B cap selection process and better protect the wages, working conditions, and job opportunities of U.S. workers.

D. Proposed Changes to the Registration Process for H-1B Cap-Subject Petitions

1. Proposed Weighted Selection Process

Comment: Some commenters expressed their support for the proposed weighted selection process. For instance, a commenter stated their support for maintaining

opportunities across all wage levels. The commenter remarked that while the proposed rule prioritizes higher wage levels, it still would allow employers offering positions at wage levels I and II to participate in the H-1B program. The commenter concluded that this approach would help ensure the program remains accessible to a wide range of employers and industries that require specialized knowledge but may not offer top-tier wages. Another commenter stated support for the weighted selection process and particularly commented on the use of OEWS wage levels for a SOC code within a particular area of intended employment as an effective mechanism for wage and geographic normalization. The commenter explained that this "astutely avoids an unfair advantage" for employers in certain areas.

Response: DHS agrees that the weighted selection approach will help ensure the program remains accessible to a wide range of employers and industries. The purpose of this rule is to implement a weighted selection process that will generally favor the allocation of H-1B visas to higher skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels. DHS also agrees that the use of OEWS wage levels is effective for wage and geographic normalization.

Comment: Some commenters asserted that the proposed weighting (four times chance for level IV, three times chance for level III, two times chance for level II, and one times chance for level I) is arbitrary. One commenter said the weighting appears to simply reflect the numbers assigned to the four wage levels, not workers' relative salaries, skill levels, or economic value. Another such commenter added that the usage of 4x, 3x, 2x, and 1x weighting lacks evidence demonstrating that the multiples would meet the H-1B program's goals, address integrity gaps left unresolved by previous reform, and protect U.S. workers.

Response: DHS disagrees that the proposed weights are arbitrary. The multiples of 4 times, 3 times, and 2 times, correspond to wage levels IV, III, and II, respectively, as

selected on the registration form (or petition if registration is suspended). It is reasonable to tie the probability of an alien's chances of selection in the lottery to the highest OEWS wage level that the proffered salary equals or exceeds because salary is generally a reasonable proxy for skill level.[76] DHS data show a correlation between higher salaries and higher skill and wage levels.[77] As a position's required skill level increases relative to the occupation, so too, may the wage level, and necessarily, the corresponding prevailing wage. A proffered wage that corresponds to the prevailing wage rate reflecting a higher wage level is generally a reasonable proxy for the higher level of skill required for the position. The proposed weighting scheme was chosen because it would achieve the policy goals of increasing the average skill level of the H-1B worker, thus better protecting U.S. workers, while balancing that goal with the competing policy goal of ensuring that U.S. employers who are unable to pay a proffered wage that corresponds to a higher wage level are not precluded from the opportunity to obtain H-1B workers if otherwise eligible. DHS believes that this rule appropriately balances the interests of U.S. workers with the interests of petitioning employers and the alien workers they seek to employ as H-1B nonimmigrants.

2. Required Information from Petitioners

a. OEWS Wage Level

Comment: A commenter asked about the timing of the wage level "lock-in." Specifically, the commenter said that the rule requires that "the OEWS wage level

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[76] *See* DOL, ETA, "Wage Methodology for the Temporary Non-Agricultural Employment H-2B Program," 76 FR 3452, 3453 (Jan. 19, 2011) (it is a "largely self-evident proposition that workers in occupations that require sophisticated skills and training receive higher wages based on those skills."); Daniel Costa & Ron Hira, Economic Policy Institute, "H-1B Visas and Prevailing Wage Level" (May 4, 2020), *https://www.epi.org/publication/h-1b-visas-and-prevailing-wage-levels*. ("Specialized skills should command high wages; such skills are typically a function of inherent capability, education level, and experience. It would be reasonable to expect that these workers should receive wages higher than the median wage.").

[77] DHS provided the following example in the NPRM: in Computer and Mathematical Occupations, the FY 2024 national median salary of H-1B workers for Level I was $89,253; for Level II was $106,000; for Level III was $140,000; and for Level IV was $163,257. USCIS OPQ, SAS PME C3 Consolidated, VIBE, DOL OFLC TLC Disclosure Data, queried 4/2025, TRK #17347. *See* 90 FR 45986, 45990 (Sept. 24, 2025).

selected on the petition must reflect the corresponding OEWS wage level as of the date that the registration underlying the petition was submitted." *See* 90 FR 45986, 45993 (Sept. 24, 2025). The commenter asked DHS to clarify which data controls if OEWS wage data is updated between registration and petition filing, which can be 90 or more days apart. The commenter also asked how registrants should account for this uncertainty when making initial wage level selections.

A few commenters expressed concerns about potential consequences if OEWS prevailing wage data were to change in between the time of registration submission and petition filing. A commenter stated that OEWS updates can lag, which could result in identical job offers that straddle release cycles to receive different weights for reasons unrelated to skill, producing arbitrary outcomes. Another commenter discussed annual wage appreciation that is effective for their position each May, which could affect the wage level selected, but would not be anticipated or reflected in their March petition. The commenter expressed concerns about being penalized if they submit lower or higher wage estimate of their future wage. The commenter suggested more flexible prevailing wage levels, rather than a fixed wage level. A commenter expressed that requiring employers to commit to specific wage levels during registration, then verifying that petition wages match registration wages months later, would create multiple opportunities for technical violations that have nothing to do with fraud or abuse but reflect the reality of how hiring processes work in practice.

Response: The OEWS wage level selected on the petition must reflect the corresponding OEWS wage level as of the date that the underlying registration was submitted, unless registration is suspended. In other words, in years that registration is required, the OEWS wage data used to determine the wage level on the registration is "locked in" as of the date of the registration. As clearly stated in the NPRM 90 FR 45986, 45993 (Sept. 24, 2025) and finalized at new 8 CFR 214.2(h)(8)(iii)(D)(*1*), petitioners

must submit evidence of the basis of the wage level selected on the registration *as of the date that the registration underlying the petition was submitted* (emphasis added).

Specifically, as finalized, the revisions to Form I-129 direct petitioners to follow the form instructions to select the appropriate wage level box in response to question 2, Section 3.[78] The revisions to the Form I-129 instructions list the following as required initial evidence if filing for an H-1B cap petition in a year that registration is required: "Evidence of the basis of the wage level selected on the registration. Such evidence could include, but is not limited to, a printout from the DOL [Office of Foreign Labor Certification] (OFLC) Wage Search website for the beneficiary's SOC code and area(s) of intended employment *as of the date of registration*" (emphasis added). The revisions to the Form I-129 instructions further state: "The OEWS wage level selected must reflect the corresponding OEWS wage level *as of the date that the registration underlying the petition was submitted*" (emphasis added). However, if the registration process is suspended, the OEWS wage level selected must reflect the corresponding OEWS wage level as of the date that the petition is submitted." Thus, DHS believes it is sufficiently clear that the appropriate wage level selected in response to Section 3, question 2 pertains to OEWS wage data that was current as of the date of registration. Even if OEWS wage data changes in between the registration and the petition filing, the Form I-129 petition (i.e., the appropriate wage level box selected on question 2, Section 3) should still reflect information that was current as of the time of registration. For example, if the proffered wage at the time of registration corresponded to a level IV wage, but a subsequent change in OEWS wage data resulted in the same proffered wage corresponding to a level III wage at the time of filing the petition, the petitioner would select the level IV wage box in response to Section 3, question 2, on the Form I-129 petition. However, the petitioner

[78] All supporting documents to the NPRM, including the proposed revisions to the form instructions, are available in the docket at: https://www.regulations.gov/docket/USCIS-2025-0040/document.

may wish to submit an explanation of any relevant changes in OEWS wage data with the petition.

Regarding the commenters' concerns about committing to the OEWS wage level at the time of registration and the suggestion for more flexible prevailing wage levels, DHS must collect the wage information at the time of registration, prior to petition filing in April, in order to weight and select registrations. DHS does not see another viable solution for collecting wage information at a later date or allowing flexible wage levels. Additionally, under the current registration process, registrants must attest that the registration reflects a legitimate job offer. Through this rule making, DHS is modifying this language to require registrants certify that the registration reflects a bona fide job offer and codifying that "a valid registration must represent a bona fide job offer" at new 8 CFR 214.2(h)(10)(ii).[79] A bona fide job offer is one that exists as described on the registration and petition and in which the employer intends to employ the beneficiary. As such, DHS believes that registrants (or petitioners) should be able to accurately reflect the corresponding wage level at the time of registration.

Comment: A commenter stated that it is unclear whether DHS will rely on the wage level reflected on the LCA or the OEWS level that the offered wage equals or exceeds. The commenter requested DHS confirm this point.

Response: DHS disagrees that the rule is unclear on which wage level will be the basis for weighting in the selection process. The rule clearly states that, on the registration (or petition, in the event of suspended registration), the registrant (or petitioner, if applicable) must select the highest OEWS wage level that the beneficiary's

[79] As stated in the NPRM, in this context, a "legitimate job offer" and a "bona fide job offer" mean the same thing. DHS is finalizing the phrase "bona fide job offer" to more closely align with the definition of a "United States employer" at 8 CFR 214.2(h)(4)(ii), which requires that the employer have "a bona fide job offer for the beneficiary to work within the United States."

proffered wage equals or exceeds for the relevant SOC code in the area(s) of intended employment.

The wage level selected on the LCA may differ from the appropriate wage level selected on the registration as a result of this rule allowing registrants to choose the highest OEWS wage level that the beneficiary's proffered wage generally equals or exceeds for the relevant SOC code in the area(s) of intended employment. It is important to distinguish the appropriate wage level selected for purposes of the registration with the wage level selected for purposes of the LCA. The wage level and prevailing wage requirements are part of the LCA process regulated by DOL. A petitioner is required to file an LCA with DOL attesting that H-1B nonimmigrants will be paid either the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage for the occupational classification in the area of intended employment, whichever is greater. *See* INA secs. 212(n)(1)(A)(i) through (ii), 8 U.S.C. 1182(n)(1)(A)(i) through (ii); 20 CFR part 655, subpart H. Petitioners must follow DOL instructions to specify the appropriate wage level for the requirements of the offered position for purposes of the LCA.[80]

Comment: A commenter stated that allowing employers to interpret key factors that determine the prevailing wage (e.g., employers interpreting the occupation and wage level differently and granting employers substantial front-end discretion over choices when they have conflicts of interest) introduces errors. The commenter claimed that this can be remedied with stronger back-end enforcement. The commenter provided examples of H-1B data from two large H-1B employers that they state demonstrate the failure of

[80] *See* DOL, Labor Condition Application for H-1B, H-1B1 and E-3 Nonimmigrant Workers, Form ETA-9035CP – General Instructions for the 9035 & 9035E, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/Form%20ETA-9035CP%20Instructions_exp.%2010.31.2027.pdf (expires Oct. 31, 2027).

prevailing wage regulations in achieving their goal of protecting workers, labor standards, and labor market integrity.

Response: DHS recognizes that allowing employers to select the factors (i.e., the SOC code, wage level, and location) that determine prevailing wage may introduce some errors. However, DHS does not see another viable solution for allowing petitioners to self-select such factors at the registration stage. DHS notes that, as part of the DOL process, petitioners already select the factors determining the prevailing wage and include such information on the LCA. DOL must certify the application within 7 days unless the application is incomplete or contains obvious inaccuracies. *See* INA sec. 212(n)(1), 8 U.S.C. 1182(n)(1). If the LCA is certified, the petitioner may file a petition with USCIS based on the certified LCA. *See* INA sec. 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b). Further, both DOL and DHS already have several integrity measures in place to ensure that employers follow the prevailing wage regulations and make truthful attestations on the LCA, registration, and petition. *See* 20 CFR 655.705(b); 8 CFR 214.2(h)(4)(i)(B)(*1*)(*ii*); 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*2*).

DHS agrees with the need for stronger back-end enforcement. This rule finalizes new integrity measures to guard against petitioners intentionally misclassifying the occupation, for example, by requiring the H-1B petition filed after registration selection to contain and be supported by the same position information and contain a proffered wage that equals or exceeds the prevailing wage for the corresponding OEWS wage level in the registration for the SOC code in the area(s) of intended employment. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). The rule also finalizes a provision allowing USCIS to deny a subsequent new or amended petition in certain circumstances suggesting an attempt to unfairly increase the odds of selection. *See* new 8 CFR 214.2(h)(10)(iii). These new provisions will complement existing integrity provisions and enhance DHS's back-end enforcement.

i. Prevailing Wage Not Based on OEWS or No Current OEWS Prevailing Wage Information Available

Comment: A few commenters stated that the rule would have a negative impact on petitioners using alternative wage sources, such as private wage surveys, collective bargaining agreements (CBAs), Service Contract Act (SCA) wage determinations, or other legitimate sources. For instance, a commenter stated that where employers rely on CBAs or legitimate private surveys, if the proffered wage falls below OEWS level I, the registration is forced into level I—reducing selection weight even for highly specialized jobs. The commenter said this punishes lawful, collectively bargained structures and sectors with atypical wage curves. A different commenter similarly expressed concerns that the rule does not treat wages arising out of alternative sources on equal footing. Another commenter wrote that the proposed rule conflicts with the DOL's regulations defining prevailing wages based on collective bargaining agreements and SCA wage determinations because it would render those wage determinations "disadvantageous when they are correlated with a level I or level II OEWS wage rate under the corresponding SOC-listed occupation. As a result, USCIS' proposed rule undercuts those prevailing wage rates and deems them detrimental for employers seeking to employ H-1B workers whose wages are subject to collective bargaining or SCA wage rates."

Response: When determining how to rank and select registrations (or petitions, as applicable) by wage level, DHS decided to use OEWS prevailing wage levels because they are the most comprehensive and objective source for comparing wages. The OEWS program produces employment and wage estimates annually for approximately 830 occupations.[81] Additionally, most registrants and petitioners are familiar with the OEWS

[81] BLS, DOL, Occupational Employment and Wage Statistics, https://www.bls.gov/oes/ (last visited Nov. 24, 2025).

wage levels since they are used by DOL and have been used in the foreign labor certification process since 1997.[82]

OEWS prevailing wage level data is publicly available through DOL's Foreign Labor Application Gateway (FLAG) system. Wages based on alternate sources, such as private wage surveys, collective bargaining agreements, and SCA wage determinations, are not always publicly available and do not always have four wage levels.

DHS disagrees with the assertions that petitioners that use non-OEWS wage sources would be disadvantaged by the rule. Petitioners may continue to use private wage surveys and other alternative wage sources, if they choose to do so, to establish that they will be paying the beneficiary a required wage. This rule, however, will weight registrations (or petitions, as applicable) generally based on the highest OEWS wage level that the proffered wage equals or exceeds as OEWS wage data is the most comprehensive and objective source for comparing wages.[83] Petitioners that use a private wage survey may choose to increase the proffered wages of their prospective beneficiaries in order to increase their chances of selection.

To help avoid disadvantaging prospective petitioners that rely on a private wage survey or other alternative sources to determine the required wage level for the proffered position for registration purposes, new 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*) states that registrants relying on a prevailing wage that is not based on the OEWS survey would select the "wage level I" box on the registration form if the proffered wage were less than the corresponding level I OEWS wage. DHS expects that all petitioners offering a wage

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[82] *See* 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, https://www.dol.gov/sites/dolgov/files/ETA/advisories/GAL/1997/GAL2-98_attach.pdf.

[83] BLS, DOL, Occupational Employment and Wage Statistics, Frequently Asked Questions, https://www.bls.gov/oes/oes_ques.htm#:~:text=The%20OEWS%20program%20produces%20employment, nonmetropolitan%20areas%20in%20each%20State ("The OEWS program is the only comprehensive source of regularly produced occupational employment and wage rate information for the U.S. economy, as well as States, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and all metropolitan and nonmetropolitan areas in each State.") (last visited Dec. 11, 2025).

lower than the OEWS wage level I wage will be using another legitimate source other than the OEWS survey. However, DHS deliberately chose to group these registrations together with level I registrations so that petitioners relying on non-OEWS sources would have a better chance of selection than if there were an additional category below level I and these registrations would have been weighted below level I registrations.

Comment: A commenter stated that although 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*) requires registrants to follow DOL guidance on prevailing wage determinations (PWDs) when no OEWS prevailing wage information is available, the rule does not specify which version of the guidance applies.

Response: As indicated in the NPRM, in the limited instance where there is no current OEWS prevailing wage information for the proffered position, the registrant would follow DOL guidance on PWDs to determine which OEWS wage level to select on the registration. 90 FR 45986, 45993 (Sept. 24, 2025). The sentence included a footnote to the proper guidance in effect as of the time of publication of the NPRM: DOL, Employment and Training Administration (ETA), Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (last modified Nov. 2009), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf. As of the time of publication of this final rule, this is still the guidance in effect that registrants should use, however, in the event DOL updates their guidance in the future, registrants should use any updated version of the Prevailing Wage Determination guidance published by DOL.

ii. Supporting Evidence of Basis of Wage Level

Comment: A commenter requested clarification on the requirement to "submit evidence of the basis of the wage level selected on the registration as of the date that the registration underlying the petition was submitted." The commenter asked what specific evidence would be accepted, asking for example if a printout from the DOL OFLC Wage

Search website would suffice in all cases, and asking how petitioners should document determinations made using alternative methodologies when OEWS data is unavailable.

Response: Petitioners must submit evidence of the basis of the wage level selected on the registration as of the date that the registration underlying the petition was submitted. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). As noted in the NPRM, such evidence could include, but is not limited to, a printout from the DOL OFLC Wage Search website for the beneficiary's SOC code and area(s) of intended employment as of the relevant date. 90 FR 45986, 45993 (Sept. 24, 2025). Where an alternate wage source is used, a petitioner should submit evidence that is appropriate for that source, such as a private wage source or collective bargaining agreement.

iii. Lowest Equivalent OEWS Wage Level When Beneficiary Would Work in Multiple Locations or Positions

Comment: A commenter expressed support for the proposals to use the lowest applicable wage or location for multi-site roles, and to treat multiple registrations for the same beneficiary by the lowest wage level, saying these proposals will address abuse patterns. Conversely, a commenter stated that the proposal directing employers to choose the lowest level of multiple locations that the proffered wage meets or exceeds undermines the policy objective of rewarding higher wages and skills.

Response: DHS agrees with the commenter that said using the lowest applicable wage level if the beneficiary will work in multiple locations makes the most sense to preserve program integrity. DHS disagrees with the commenter that said that this requirement undermines the policy objective of the rule. As noted in the NPRM, this requirement removes a potential incentive to inflate wage levels through strategic location or position choices and helps ensure integrity of the selection process. 90 FR 45986, 45993 (Sept. 24, 2025). While a major policy objective of the rule is to favor the

allocation of H-1B visas to higher-skilled and higher-paid aliens, it is also important that DHS not jeopardize program integrity.

Comment: Regarding agents placing beneficiaries in multiple positions, a commenter asked how they should calculate and document the "lowest corresponding OEWS wage level" when positions may have different SOC codes, different locations, and different wage structures.

Response: As indicated in the NPRM, if the beneficiary will work in multiple locations, or in multiple positions if the petitioner is an agent, the petitioner must select the lowest corresponding OEWS wage level that the beneficiary's proffered wage will equal or exceed. 90 FR 45986, 45992-93 (Sept. 24, 2025). Petitioners must submit evidence of the basis of the wage level selected on the registration as of the date that the registration underlying the petition was submitted. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). As noted in the NPRM, such evidence could include, but is not limited to, a printout from the DOL OFLC Wage Search website for the beneficiary's SOC code and area(s) of intended employment as of the relevant date. 90 FR 45986, 45993 (Sept. 24, 2025). Such evidence may also include a separate print-out for each location, and each position if there are multiple positions. USCIS will consider all submitted evidence, in addition to the information contained in the registration, LCA, and petition, to determine if the registrant indeed selected the lowest corresponding OEWS wage level among the multiple locations or positions.

iv. Lowest OEWS Wage Level Among All of the Registrations Submitted on a Beneficiary's Behalf (if the Registrations have Different Wage Levels)

Comment: Expressing concern about "loopholes" in the rule, a commenter recommended, in cases where multiple employers petition on behalf of the same individual, only the petitions at the highest wage level should be considered, and to

require beneficiaries to remain at the same position title and receive at least the same wages as shown in their application for the duration of their visa.

Conversely, a commenter stated that the proposal for USCIS to assign a wage level to a beneficiary based on the lowest OEWS wage level among all registrations for a beneficiary will erase legitimate higher wage offers and give controlling significance to the lowest bid. Another commenter said that this approach would penalize a legitimate employer with a level IV wage, and requested that DHS consider the highest OEWS wage level among the registrations to avoid the "cascading effect that would otherwise allow one lower-wage registration to dilute the merit-based weighting for all employers associated with the same worker." Another commenter discussed the situation where multiple entries are created for registrants who file H-1B petitions at wage level II and the resulting dilution of any advantage of higher wage level registrants. Further, the commenter discussed handling of beneficiaries with multiple offers and where the lower-level offer will determine the lottery positioning of all of that beneficiary's petitions. Another commenter said that the rule creates inequity for multi-location employers, pointing to proposed 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*), which says that if a position involves multiple worksites, the employer must base the registration on the lowest applicable wage level across all sites. The commenter explained that a software engineer dividing time between Atlanta (level III) and Birmingham (level II) must therefore be registered at level II. The commenter said that this "lowest-common-denominator" rule penalizes universities, hospitals, regional service firms, and manufacturers that maintain distributed or hybrid operations, forcing them into lower-weighted categories and further reducing selection odds.

Response: DHS is aware that multiple employers may register or petition on behalf of the same individual at various corresponding wage levels. However, rather than assign the highest wage level among multiple registrations as the commenters suggest,

DHS believes that assigning the lowest wage level is preferable because it would create less of an incentive for unscrupulous employers to try to game the system. In this scenario, a beneficiary for whom a level I registration and a level IV registration have been submitted will be assigned to wage level I for the purpose of weighted selection. The proposal to assign the beneficiary to the lowest OEWS wage level among all of the registrations submitted on his or her behalf is intended to remove an incentive for multiple registrants to submit frivolous registrations with artificially high wage levels in an attempt to unfairly increase a beneficiary's chances of selection.

DHS is aware of the potential that a registration with a wage corresponding to a lower wage level would negatively impact other registrations for the same beneficiary at higher wage levels, including a legitimate employer's registration for a beneficiary with a level IV wage. However, it is expected that registrants will communicate with beneficiaries to make informed decisions regarding whether other companies have submitted registrations on their behalf, and under which corresponding wage level.

Regarding multi-location employers, DHS does not agree that this rule will generally penalize the list of employer types that the commenter indicated. Employers should be aware that, if they are placing beneficiaries at multiple locations, DHS will assign the registration the lowest corresponding wage level for selection purposes. DHS does not believe that this is a common enough scenario that it is worth leaving open a loophole for unscrupulous employers to try to game the system.

v. Other Comments Related to OEWS Wage Data

Comment: Some commenters expressed other concerns about perceived inadequacies of OEWS data and survey methodology. One commenter raised concerns about relying solely on OEWS data to determine wage levels, noting it could lack detail for emerging, specialized, or hybrid roles. Another commenter raised concerns about OEWS survey methodology, saying that urban respondents outnumber rural respondents,

artificially inflating wages for many positions. The commenter also said that the voluntary nature of DOL's wage survey makes it highly unlikely that there will be an accurate depiction of physician wage levels across all specialties and all geographic areas. A different commenter wrote that the prevailing wage system concentrates opportunities in lower-wage localities or remote arrangements, disadvantaging large cities that serve as innovation hubs. This commenter wrote that a prevailing wage framework should better align level I wages "to the true entry level percentile for the occupation and locality" and should allow alternative wage sources when OEWS data for a locality are skewed by senior level concentrations.

Response: DHS recognizes that the OEWS system has certain data limitations but disagrees that an alternative method of calculating wages is necessary to implement a fair and efficient weighted H-1B cap selection process. DHS notes that DOL guidance on prevailing wage determinations provides for use of the OEWS survey.[84] Additionally, DHS believes that OEWS provides the most comprehensive and objective publicly available source for obtaining prevailing wage information and, thus, is still the best available option to serve the overarching goal of this rule. Further, DHS believes that incorporating non-OEWS wage sources into the registration selection process would add unnecessary complexity into the process and frustrate the goal of administering the cap selection process in an efficient and effective manner.

vi. SOC Code of Proffered Position

Comment: A commenter said the proposed rule assumes that SOC codes can serve as a precise proxy for labor market value and skill differentiation, but in practice SOC codes are broad occupational groupings developed for statistical tracking, not for making nuanced distinctions in immigration benefit allocation. For example, the

[84] DOL, ETA, Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (last modified Nov. 2009), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf.

commenter wrote that the SOC classification "Attorney" encompasses all practice areas regardless of specialization, meaning a newly licensed attorney in a small firm and a highly experienced attorney in a specialized practice are treated identically, which would create distortions when wage-based weighting is applied without regard to function or expertise.

Another commenter wrote that there are significant ambiguities in choosing SOC codes, as many positions fall between two or three SOC codes, and beneficiaries often have interdisciplinary educational backgrounds, which could create inconsistencies in how wage levels and lottery weights are applied. Similarly, a commenter stated that because multiple roles can map to multiple plausible SOC codes with different wage ladders, the SOC choice will directly affect selection odds, which increases the stakes and the chance of misclassification disputes. A couple of commenters discussed inconsistencies between how employers classify occupations using SOC codes. A commenter stated that the proposed wage level construct is misleading because it does not allow for effective comparison or ordering for, or among, specific or detailed occupations.

Response: While DHS understands that SOC codes sometimes provide broad occupational groupings that may not allow for nuances in certain occupations, DHS does not see a viable alternative for sorting and classifying occupations for the purpose of this rule. Employers already must select the appropriate SOC code when submitting an LCA and when filing an H-1B petition, and this rule relies on that longstanding practice to implement a process to efficiently and effectively determine the corresponding wage level for purpose of weighting registrations or petitions, as applicable. DHS disagrees with the commenter's assertion that a newly experienced attorney would be treated the same as a specialized and experienced attorney. DHS believes that employers will offer a wage commensurate with the difference in experience and specialization, such that it is

more likely that an experienced, specialized attorney would be paid a wage that corresponds to a higher wage level than a newly experienced attorney and have a greater chance of selection based on this final rule.

b. Area of Intended Employment

Comment: Multiple commenters stated that wage levels based on geographic location could lead to inconsistent outcomes, where the same salary places applicants in different wage levels depending on the region. A commenter stated that there is a risk of introducing inequitable geographic and sectoral consequences because prevailing wage data are inconsistent across metropolitan areas and occupational codes, causing firms in lower-cost regions to potentially face artificially lower selection odds than when offering competitive wages relative to local market.

Some commenters claimed that the proposed rule would disproportionately disadvantage applicants in high-cost areas, even when their compensation and skill level are equivalent to those in lower-cost regions. Some commenters said that cost-of-living differences across regions create structural bias where employers in high-cost metropolitan areas struggle to meet wage thresholds while those in lower-cost regions can more easily offer higher wage levels for similar roles. Similarly, a commenter stated that a salary-based weighting system would benefit outsourcing firms in lower-cost areas while hurting start-ups and other tech companies in high-cost hubs like Silicon Valley. One commenter stated that the proposed wage weighting would punish "agglomeration centers" and reward lower-cost regions, "skewing outcomes away from where spillovers and mentorship are largest." Another commenter suggested that the proposed weighting could penalize applicants in "innovation-driven regions," such as San Francisco and Seattle where employees earn higher wages due to living costs and competitive markets.

In contrast, a few commenters stated that the proposed rule would favor companies in high-cost areas, where higher salaries are more common, over those in

lower-cost areas. A commenter expressed concern that a pure wage-based model would unfairly penalize employers in States with lower costs of living, even if they are paying fair, market-competitive salaries locally. A commenter expressed concern that the proposed rule could create geographic bias by favoring workers in high-cost metropolitan areas over those in rural or lower-cost regions, potentially undermining national economic development goals. A commenter said this geographic distortion could lead to inequities and make the program appear arbitrary.

Response: DHS disagrees that this rule will disproportionately disadvantage or advantage registrants in certain geographic areas. The rule neutralizes geographic differences in salary amounts by taking into account the area of intended employment when weighting registrations. Particularly, USCIS will select H-1B registrations generally based on the highest OEWS prevailing wage level that the proffered wage equals or exceeds for the relevant SOC code and area(s) of intended employment. In weighting according to the equivalent wage level, which already considers the area(s) of intended employment, the final rule makes it so that registrations for the same wage level will be weighted the same regardless of whether their proffered wages are different owing to their areas of intended employment.

Comment: A commenter expressed concern that the prevailing wage system would set entry-level thresholds too high in certain regions, creating barriers for junior international workers and misaligning wages with real cost-of-living. Another commenter said that while they support the wage level concept, they are concerned it could disadvantage workers at mid-sized companies who perform similar work as those at larger firms but receive lower pay due to location-based constraints, potentially leading to unfair outcomes in visa eligibility. Another commenter said that current wage tiers are too low to reflect market conditions, especially in certain regions. Another commenter stated that the NPRM does not provide supporting analysis of economic or regional

impacts across metropolitan and nonmetropolitan areas. The commenter predicted the proposed wage-level weighting system would affect different occupations and geographic regions in different ways due to inequities that arise from local wage variations. The commenter stated the inequities in wage variations would impact lower nominal wage industries like healthcare, nonprofit research, and early-stage innovation, and would reduce the industry diversity and geographic reach of the H-1B program.

Response: DHS disagrees that this rule will favor companies in certain areas since the rule neutralizes geographic differences in salary amounts by taking into account the area of intended employment when weighting registrations. The OEWS prevailing wage inherently accounts for wage variations by location, as such data is broken down by occupational classification in an area of employment. DHS agrees that some wage levels are below market rate, which is part of the reason DHS sees the need for this rulemaking. One of the goals of this rule is to better ensure that the H-1B cap selection process favors relatively higher-skilled, higher-valued, or higher-paid foreign workers rather than continuing to allow numerically limited cap numbers to be allocated predominantly to workers in lower skilled or lower paid positions. While DHS did not conduct an in-depth analysis to measure regional impacts across metropolitan and nonmetropolitan areas, DHS notes that the rule neutralizes geographic differences in salary amounts by taking into account the area of intended employment when weighting registrations.

c. Other Comments Related to Required Information

Comment: Some commenters discussed how certain staffing or contracting companies are deliberately altering or misrepresenting a beneficiary's passport number so as to enter an individual multiple times in the registration. To avoid this problem, a commenter said that DHS must ensure that each registration must be accompanied by a scanned copy of the beneficiary's passport with clearly identifiable information.

Response: DHS does not believe requiring a scanned copy of the beneficiary's passport with the registration is necessary, as the current regulations already require the petitioner to provide the beneficiary's passport or travel document information at the time of registration. *See* 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*). Further, on the registration form the registrant must certify under penalty of perjury that the registration represents a bona fide job offer and that the organization(s) on whose behalf this registration is being submitted intends to file an H-1B petition on behalf of the beneficiary named in each registration if the beneficiary is selected.

Petitioners are also required to submit evidence of the passport or travel document used at the time of registration to identify the beneficiary at the time of filing. *See* 8 CFR 214.2(h)(8)(iii)(D)(*1*). The H-1B petition filed on behalf of a beneficiary must contain and be supported by the same identifying information, and if the passport numbers do not match, USCIS may deny or revoke the petition. USCIS may also deny or revoke a petition if the statement of facts contained on the registration or petition submission was inaccurate, fraudulent, materially misrepresents any fact, or was not true and correct. Additionally, USCIS may refer an individual or entity to appropriate Federal law enforcement agencies for investigation and further action, as appropriate.

E. Process Integrity

1. Certifying the Contents of the Registration and Consequences

Comment: A commenter asked what documents must be provided at registration to demonstrate that the registration represents a bona fide job offer.

Response: On the registration form, the registrant must certify under penalty of perjury, among other things, that the registration represents a bona fide job offer and that the organization(s) on whose behalf this registration is being submitted intends to file an H-1B petition on behalf of the beneficiary named in each registration, if the beneficiary is selected. Aside from the requisite certification, documentation is not required to be

provided at the time of registration because USCIS does not adjudicate the registration. Registration is merely an antecedent procedural step to efficiently administer the H-1B cap selection process and determine eligibility to file an H-1B cap petition in years of excess demand.

If USCIS has reason to believe that the certifications made during registration are not true and correct, it will investigate the parties in question, including examining evidence of collusion and patterns of non-filing of petitions. If USCIS finds that a certification was not true and correct, USCIS will find the registration to not be properly submitted. The prospective petitioner would not be eligible to file a petition based on that registration, and USCIS may deny a petition, or revoke a petition approval, based on an invalid registration that contained a false certification. New 8 CFR 214.2(h)(10)(ii). USCIS may make findings of fraud or willful material misrepresentation against petitioners, if the facts of the case support such findings. USCIS may also refer the individual or entity who submitted a false certification to appropriate Federal law enforcement agencies for investigation and further action, as appropriate.

2. Potential Employer Wage Manipulation

Comment: Numerous commenters said the proposed rule would incentivize employer wage manipulation at the registration stage. Multiple commenters reasoned that employers might inflate wages to increase their chances in the lottery without actually paying the stated wages. Many commenters also remarked that job titles or descriptions for a beneficiary could be inflated to increase the salary level and chance of selection.

Some commenters discussed how companies could engage in fraudulent payroll practices by inflating paychecks to increase chances in the lottery. Commenters stated that companies may issue inflated paychecks to meet wage requirements on paper, but in reality pay employees much less. A commenter characterized the rule as a "half-measure," writing that employers will inflate proffered wages on paper, then bench

workers or dodge pay via loopholes like phantom bonuses—fueling abuse by outsourcers who undercut U.S. wage rates. One commenter discussed that small companies could inflate paychecks to meet wage requirements, sometimes reclaiming the excess amount from employees through unofficial means, even when there is no actual job. Another commenter suggested that companies could collude in determining which level of wage to offer to increase the chance of selection.

A commenter said the rule may inadvertently encourage wage manipulation, such as by employers: artificially increasing wages to reach higher tiers without genuine job changes; cutting benefits or other compensation to offset inflated base pay; clustering wages just above OEWS thresholds ("bunching"); or narrowing job roles to maintain appearance of high pay. Other commenters suggested that a self-sponsored H-1B could claim they make a salary that would allow them to gain an advantage in the lottery.

A commenter also raised concerns about employers manipulating salary timing to meet H-1B requirements, such as paying low wages for most of the year and increasing pay shortly before submitting a petition, thereby USCIS only seeing the higher recent pay on submitted paystubs. The commenter recommended requiring all paystubs or income tax records to verify consistent compensation. The commenter further cautioned that advances in AI could make it easier to falsify documents, urging USCIS to take greater care in validating submitted materials.

Some commenters also expressed doubts about USCIS' ability to enforce the proposed wage-based selection process and verify that employers pay the wages promised. A commenter said that the proposed rule does not address how companies will be prevented from inflating wages for the lottery and reducing them later. Another commenter recommended that employers report any changes to wage or position in real-time to USCIS, and that penalties for violations be significant enough to deter gaming the system, including fines and potential disqualification from future H-1B filings. Some

commenters provided suggestions to detect and deter employer wage manipulation, including ensuring:

- Employers provide supporting documentation that demonstrates the offered wage is appropriate for the position and location, such as internal compensation policies or comparable industry data.
- Companies demonstrate real ability to pay the stated wage;
- The occupational classification aligns with actual job duties;
- The selected wage be paid for a minimum of 12 months after the H-1B start date;
- Payroll records verify consistent compensation;
- The employer provides a signed attestation confirming the wage commitment;
- Penalties for violations or misclassification, including repayment of the difference and potential bans on future H-1B filings;
- Tie the wage level used for weighting to the certified LCA at filing;
- Require attestations under penalty of perjury;
- Run post-selection audits against DOL OEWS and LCA data; and
- Set meaningful penalties for misclassification.

Response: DHS is also concerned about wage manipulation and program integrity, but this rule and existing regulations contain provisions to sufficiently address these concerns. This rule will require an H-1B petition filed after registration selection to contain and be supported by the same identifying information and position information, including SOC code, provided in the selected registration and indicated on the LCA used to support the petition. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). The petition must also include a proffered wage that equals or exceeds the prevailing wage for the corresponding OEWS wage level in the registration for the SOC code in the area(s) of intended employment as described in 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*). *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). In addition, USCIS may deny a subsequent petition by the

employer if USCIS determines that the filing of the new or amended petition is part of the petitioner's attempt to unfairly increase the chance of selection during the registration or petition selection process, as applicable, such as by changing the proffered wage in a subsequent new or amended petition to an amount that would be equivalent to a lower wage level than that indicated on the registration. *See* new 8 CFR 214.2(h)(10)(iii).

These new requirements will work in conjunction with existing H-1B regulations to prevent unscrupulous actors from entering information at the registration stage to increase their chance of selection without intending to employ the beneficiary under the same terms indicated at registration. Both the submitted registrations and filed petitions are signed under penalty of perjury that the information on the registration or petition is true and correct and that both the registration and petition represent the offer of a legitimate or bona fide job. USCIS may deny a petition or, if approved, revoke the approval of a petition, if the statement of facts contained on the registration form is inaccurate, fraudulent, misrepresents any material fact, or is not true and correct. *See* 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*2*). Employers must also attest on the registration submission, under penalty of perjury, that they have not colluded to increase their chances of selection.

DHS likewise agrees that petitioners misrepresenting the salary (including salary timing) in order to inflate the odds of selection, while not actually paying the beneficiary that salary, is an important integrity concern. DHS acknowledges these concerns but does not agree that the weighted selection framework will produce the harm described. Existing DHS and DOL regulations clearly require the petitioner to meet the obligations of the LCA and the petition, including the proffered wage requirements. *See* 8 CFR 214.2(h)(4)(iii)(B), 20 CFR 655.705(c)(1), and 655.731. This rule does not address or change DOL regulations regarding the petitioner's wage obligations. Employers cannot inflate wages on paper to obtain higher wage levels because prevailing wage

classifications are based on job requirements and location, and employers are legally required to pay the actual or prevailing wage, whichever is higher. *See* INA sec. 212(n)(1), 8 U.S.C. 1182(n)(1). Failure to pay at least the required wage is illegal and the rule does not change these obligations or create incentives for wage misclassification. Similarly, existing H-1B rules already prohibit unpaid benching and require employers to pay the required wage during nonproductive time. These protections remain fully in place under the weighted-selection process.

Additionally, DHS[85] and DOL[86] have mechanisms in place to report concerns of fraud or misrepresentation in the H-1B process. If DOL finds that an employer has violated the LCA attestations and wage obligations, DOL may impose administrative sanctions and notify USCIS that the employer shall be disqualified from approval of petitions filed by the employer for a designated period of time, depending on the nature of the violations. *See* 20 CFR 655.800. Moreover, as noted previously, if USCIS discovers that a petitioner is violating the terms and conditions of the petition, including not paying the beneficiary the required wage, USCIS may revoke the petition approval on notice. *See* 8 CFR 214.2(h)(11)(iii). During the adjudication of any petition based on a selected registration, USCIS will confirm that the OEWS wage level and LCA information support the submitted registration and petition.

DHS notes that these regulations apply to all registrations, including those submitted by beneficiary owners. If a beneficiary owner submits a registration with a wage level that is higher than that which corresponds to what the offered position actually pays, the petition would be denied. If the beneficiary owner instead misrepresents the salary on the LCA or petition, the petition will be denied or the approval revoked because

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[85] *See* the ICE Tip Form for reporting suspected immigration benefit fraud and abuse, https://www.ice.gov/webform/ice-tip-form.

[86] *See* 20 CFR 655.710(a) for procedures for filing a complaint concerning misrepresentation in the labor condition application or failure of the employer to meet a condition specified in the application.

the information contained in the LCA or petition was not true and correct. *See* 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*2*).

DHS declines to add additional evidentiary requirements to verify salary at the registration stage through this rulemaking, such as requiring all paystubs or income tax records, as USCIS does not adjudicate registrations. Further, requiring such documents as initial evidence during the petition stage may not be feasible, as many registrations are for prospective jobs such that this evidence would not be available at the time of filing. Moreover, USCIS already requires such evidence to determine whether the beneficiary maintained status when adjudicating an extension petition. USCIS also uses a compliance review program as an additional way to verify information in certain visa petitions.[87] Under this program, USCIS Fraud Detection and National Security (FDNS) officers make unannounced site visits to collect information as part of a compliance review. A compliance review verifies whether petitioners and beneficiaries are following the immigration laws and regulations that are applicable in a particular case. During a compliance review, FDNS officers may assess whether the beneficiary is being paid the wage as stated on the petition and consistent with the wage level marked on the registration. Therefore, DHS believes this rule and existing regulations are sufficient to address these issues.

Concerning the comments on existing integrity issues, such as bad actors claiming to employ or pay beneficiaries when in reality the job does not actually exist and the beneficiary is then paying their "wage" back to the company, DHS continues to explore ways to improve the integrity of the H-1B petition process. However, as this concern is not a result of the proposed weighted selection process, it is beyond the scope of this narrowly tailored rule. Similarly, the suggestions that DHS pursue additional enforcement

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[87] *See* USCIS, Administrative Site Visit and Verification Program, https://www.uscis.gov/about-us/organization/directorates-and-program-offices/fraud-detection-and-national-security-directorate/administrative-site-visit-and-verification-program (last modified May 13, 2025).

mechanisms, such as "penalties" for violations or misclassification, or potential bans from the registration, are also out of scope of this rulemaking. USCIS may, however, refer an individual or entity who submitted a false certification to appropriate Federal law enforcement agencies for investigation and further action, as appropriate.

a. Part-Time Employment Concerns

Comment: Several commenters expressed concerns about the possibility of abuse by companies that would offer part-time positions at greater hourly wages, but would reduce overall working hours, to increase their chance of selection. Other commenters expressed similar concerns about potential abuse of part-time positions or ways to manipulate work hours to artificially inflate the salary used as the basis for the registration. Commenters proposed that USCIS should only count the annual salary for lottery purposes, or require full-time employment.

Response: DHS appreciates these concerns but believes they are adequately addressed by existing regulations and the provisions finalized by this rule. USCIS may already deny a petition or, if approved, revoke the approval of a petition, if the statement of facts contained on the registration form is inaccurate, fraudulent, misrepresents any material fact, or is not true and correct. *See* 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*2*). This final rule authorizes USCIS to deny or revoke approval of a subsequent new or amended petition filed by the petitioner, or a related entity, on behalf of the same beneficiary, if USCIS determines that the filing of the new or amended petition is part of the petitioner's attempt to unfairly decrease the proffered wage to an amount that would be equivalent to a lower wage level, after listing a higher wage level on the registration to increase the odds of selection. *See* new CFR 214.2(h)(10)(iii) and (11)(iii)(A)(*8*). Thus, if USCIS finds that an employer misrepresented the part-time or full-time nature of a position, the number of hours the beneficiary would work, or the proffered salary, then USCIS could deny the petition or revoke the petition approval. *See* 8 CFR

214.2(h)(10)(ii) and (11)(iii)(A)(*2*). The ability to deny or revoke approval of an H-1B petition in this context will militate against registrants and petitioners attempting to abuse the H-1B cap selection process through misrepresentation.

b. Domestic vs. Consular Petitions

Comment: Some commenters mentioned that employers who file petitions for consular processing can offer higher wages yet avoid paying those wages until the worker enters the United States, allowing them to gain selection process advantages without financial commitment. The commenters noted that this creates asymmetry between petitioners who must pay wages immediately for workers inside of the United States and those who delay activating their workers located abroad.

Response: DHS declines to make any changes to address this perceived advantage or asymmetry. By the commenters' logic, a petitioner requesting a one-year validity period would have an unfair advantage over a petitioner requesting a three-year validity period because they would not have to pay the employee the stated wage for as long. However, the timing of wage obligations is governed by DOL regulations and is not being addressed or changed with this rule. DHS further notes that the petitioner must still be offering a bona fide job to the alien with the intent that the alien will enter the United States to perform the offered work. Employers are obligated to pay aliens in H-1B status in compliance with DOL regulations. Additionally, as noted previously, if the company or related entity were to file an amended petition in an attempt to later lower the proffered wage after using a higher wage level to gain an unfair advantage in registration, USCIS could deny that petition. *See* new CFR 214.2(h)(10)(iii).

3. Consistency between the Registration and the Petition

Comment: A commenter discussed the need for consistency of requirements between the registration and the petition stating that (1) a "zero-tolerance policy for bait-and-switch tactics" should be adopted and any discrepancy between a petition and

registration result in an automatic denial; and (2) a cross-agency data verification (e.g., H-1B registration, DOL LCA filing, and Form I-129 petition) should be used to flag inconsistencies in wage and position data for immediate manual review.

Response: As noted in the NPRM, this rule will require an H-1B petition filed after registration selection to contain and be supported by the same identifying information and position information, including SOC code, provided in the selected registration and indicated on the LCA used to support the petition. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). 90 FR 45986, 45995 (Sept. 24, 2025). This is necessary to prevent unscrupulous actors from entering information at the registration stage to increase their chance of selection without intending to employ the beneficiary under the same terms indicated at registration. USCIS will utilize available USCIS and DOL systems to ensure that the information on the LCA supports, and is consistent with, the registration and petition.

4. Potential SOC Code Manipulation

Comment: Some commenters reasoned the proposed rule would create opportunities for the SOC codes to be exploited to boost selection odds and manipulated to exaggerate job complexity. Another commenter said that the standards for assigning wage levels are not strict enough. Expanding on this same point, another commenter said that explicitly prioritizing wage levels will encourage employers to manipulate them, which they can achieve without actually raising salaries. The commenter explained that the largest new incentive will be to reclassify a job into an occupational category with a lower prevailing wage so that they will get more lottery entries for the same salary.

One commenter provided an example of how two managerial roles could be classified under the Industrial Engineer SOC code (primary duties include technical process improvement, metrics analysis, and workflow optimization) to achieve a higher wage level, even though the position is effectively a managerial role. Some commenters

also remarked that job titles or descriptions for a beneficiary could be manipulated to support selection of an SOC code where the proffered wage would place the beneficiary into a higher wage level rather than the true SOC code, which would put the beneficiary in a lower wage level, thereby inflating the beneficiary's selection chances.

Commenters also stated that lower-skilled job codes could be selected that have higher prevailing wages because the SOC framework permits multiple plausible classifications for a given role and not all specialized occupations have a perfectly matching SOC code.

Response: All petitioners are required to identify the appropriate SOC code for the proffered position on the LCA. During the adjudication process, USCIS "will determine whether the labor condition application involves a specialty occupation as defined in section 214(i)(1) of the Act and properly corresponds with the petition." *See* 8 CFR 214.2(h)(4)(i)(B). If USCIS has reason to question whether the SOC code selected by the petitioner properly corresponds with the petition, USCIS will comply with 8 CFR 103.2(b)(8) and may provide the petitioner an opportunity to explain the selected SOC code, as applicable. If USCIS determines that the petitioner failed to meet its burden of proof in establishing that it selected the appropriate SOC code for the position, USCIS may deny the petition. *See* new 8 CFR 214.2(h)(10)(ii). Further, a petition will be denied if USCIS determines "that the statements on the petition, H-1B registration (if applicable), the application for a temporary labor certification, or the labor condition application, were inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the registration are determined to be false." *See* 8 CFR 214.2(h)(10)(ii). As such, a petitioner's misrepresentation of the offered position on the LCA, registration, or petition is already grounds for denial of the petition. Additionally, if USCIS discovers that the petitioner is violating the terms and conditions of the petition (for example, employing the beneficiary in a position that does not align with the SOC

code and position described in the petition, registration, or on the LCA), USCIS may revoke the petition approval on notice. *See* 8 CFR 214.2(h)(11)(iii). DHS believes that USCIS' ability to verify that the LCA, including the SOC code on the LCA, properly corresponds with the petition will help to prevent possible abuse, such as choosing an inaccurate SOC code to increase the chance of selection.

5. Potential Job Location Manipulation

Comment: Several commenters expressed concerns that employers could manipulate job locations to meet specific salary thresholds, thereby improving an applicant's chances of selection. Some commenters discussed how companies could choose a low-cost location with a level IV wage as the work location when entering the location, but after a brief period of stay, move the individual to the actual work location. Conversely, multiple commenters said employers could also promise a high-cost city wage level far above what they intend to pay and shift workers to lower-cost regions after activation where pay is significantly lower. A commenter noted that the proposed rule would effectively encourage companies to reposition jobs toward cheaper regions to gain lottery advantage, because the same job may be treated as "high level" in a smaller city and "low level" in a metropolitan hub. Commenters expressed concern that outsourcing firms could exploit the rule by relocating operations to smaller cities with lower wages. Citing examples of multiple office locations with the same wage package in different regions, a commenter asked how employee-preferred relocation to a position in a low-cost area (where the position would have a higher wage level) for a better chance in the lottery would be treated in terms of compliance. Some commenters questioned how USCIS will distinguish between permissible disclosure of multiple locations versus impermissible gaming of the wage level selection.

Response: As noted in the NPRM, this rule will require an H-1B cap-subject petition filed after registration selection to contain and be supported by the same

identifying information and position information, including SOC code, provided in the selected registration and indicated on the LCA used to support the petition. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). 90 FR 45986, 45995 (Sept. 24, 2025). Such petition must also include a proffered wage that equals or exceeds the prevailing wage for the corresponding OEWS wage level in the registration for the SOC code in the area(s) of intended employment as described in 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*). *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). These requirements are necessary to prevent unscrupulous actors from entering information at the registration stage to increase their chance of selection without intending to employ the beneficiary under the same terms indicated at registration. DHS also expects that the area of intended employment provided at registration will be reflected as a worksite in the subsequently filed petition, such that the petition continues to support the requirement that the registration was based on a bona fide job offer. *See* new CFR 214.2(h)(8)(iii)(D)(*1*). While the registration will require the registrant to list only one work location—specifically, the work location corresponding to the lowest equivalent wage level as the area of intended employment if the beneficiary will work in multiple locations—the petition will have to list all addresses where the beneficiary is expected to work.

The final rule will also allow USCIS to deny a subsequent new or amended petition filed by the petitioner, or a related entity, on behalf of the same beneficiary if USCIS were to determine that the filing of the new or amended petition was part of the petitioner's attempt to unfairly increase the odds of selection during the registration (or petition, if applicable) selection process, such as by reducing the proffered wage to an amount that would be equivalent to a lower wage level than that indicated on the original registration or petition. *See* new 8 CFR 214.2(h)(10)(iii). If the new or amended petition included the same proffered wage but changed the work location such that the proffered wage now corresponded to a lower OEWS wage level for the new location than the level

indicated on the registration, USCIS will consider that change in determining whether the new or amended petition was part of the petitioner's attempt to unfairly increase the odds of selection. These regulations will apply regardless of the reason for relocation and whether it was employer or employee driven.

This rule does not prevent employers from making business decisions about the location or relocation of their operations and the terms of employment for their employees. If an employer chooses to move a position to a low-cost area while retaining a salary commensurate with a high-cost location, such that the salary would result in a higher wage level designation in the low-cost area, that is in the purview of the business. This would be permissible under this rule as long as the employer is offering a bona fide position at that location and the beneficiary will in fact work in that location. However, attempts to then move the beneficiary back to a high-cost location would be heavily scrutinized and the petition could be denied if USCIS finds that the employer did not meet its burden of proof to show that the move was not made to unfairly increase the chances of selection. *See* new 8 CFR 214.2(h)(10)(iii).

In regard to questions about how USCIS will distinguish between legitimate multiple locations and impermissible gaming, the proposed rule makes clear that the position, as described on the LCA and registration, must be bona fide and if the offered position involved work in multiple locations, the employer must submit a registration corresponding to the lowest wage level associated with the locations. *See* new 8 CFR 214.1(h)(8)(iii)(A)(*5*)(*i*). For example, if a job involves work in two different MSAs, one where the proffered salary equals a level I wage and one where the proffered salary equals a level II wage, the employer must submit a registration at level I. Failure to do so will result in denial of the petition. Whether a change represents "impermissible gaming" is case specific based on the facts presented. USCIS will examine the registration and the petition, which includes the LCA, to compare the offered positions, SOC codes,

locations, and wage levels, along with the totality of the circumstances to determine whether the petitioner has established that the change in employment is not part of an attempt to game the selection process and increase the chance of selection.

a. Remote Work Considerations

Comment: Many commenters specifically addressed remote work considerations in the context of gaining an unfair advantage in the weighted selection process. A commenter said that the proposed rule contemplates the possibility of someone working at two different locations (onsite work plus remote work, the hybrid model) but does not address the possibility of someone working entirely remotely. A commenter discussed how an employer could apply for a low-cost-of-living location and an occupational category having a lower wage level to increase chances in the lottery, but have the beneficiary work remotely in a high-cost-of-living location. Similarly, another commenter reasoned that an employer could list fully remote positions in low-wage areas in order to claim a level IV wage in a rural nonmetropolitan area, thereby offering a lower wage but higher chance for the beneficiary to be selected. The commenter added they could foresee a "wave" of H-1B registrations claiming level IV wages, not because a job requires high-level skills or offers truly high compensation, but because artificial work locations give a statistical edge. A commenter said USCIS should clarify how remote workers are to be treated under the weighted selection process, including guidance on relocations, wage determination, and weight eligibility. Another commenter suggested that to prevent gaming of the system, wage levels must be binding once selected, and remote work should default to the primary worksite for prevailing wage purposes, and misrepresentation should incur strict penalties.

Response: Regardless of whether the work will be performed at an office or remotely, the registrant must provide the appropriate SOC code of the proffered position and the area of intended employment that served as the basis for the OEWS wage level

indicated on the registration, in addition to any other information required on the electronic registration form (and on the H-1B petition) as specified in form instructions. *See* new 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*). The registrant must also certify, under penalty of perjury, that all of the information contained in the registration is true and correct. Importantly, if the beneficiary will work in multiple locations, the registrant must select the lowest corresponding OEWS wage level that the beneficiary's proffered wage will equal or exceed. *Id.* This provision removes a potential incentive to inflate wage levels through strategic location choices, including through remote work, to help ensure integrity of the selection process.

The rule also allows USCIS to deny a subsequent new or amended petition filed by the petitioner, or a related entity, on behalf of the same beneficiary if USCIS were to determine that the filing of the new or amended petition was part of the petitioner's attempt to unfairly increase the odds of selection during the registration selection process, such as by reducing the proffered wage to an amount that would be equivalent to a lower wage level than that indicated on the original registration or petition. *See* new 8 CFR 214.2(h)(10)(iii). Further, USCIS will deny a petition if it determines "that the statements on the petition, H-1B registration (if applicable), the application for a temporary labor certification, or the labor condition application, were inaccurate, fraudulent, or misrepresented a material fact, including if the attestations on the registration are determined to be false." *See* 8 CFR 214.2(h)(10)(ii). As such, a petitioner's misrepresentation of the offered position's location on the LCA, registration, or petition is already grounds for denial of the petition.[88] Additionally, if USCIS discovers that a petitioner is violating the terms and conditions of the petition (for example, employing the beneficiary in a location that does not align with the location described in the petition,

[88] Nothing in this rule changes the Department of Labor's administration and enforcement of statutory and regulatory requirements related to labor condition applications.

registration, or on the LCA), USCIS may revoke the petition approval on notice. *See* 8 CFR 214.2(h)(11)(iii).

6. Multiple Registrations

Comment: Some commenters stated that companies could submit multiple registrations using shell companies or subsidiaries to game the weighted selection process. Another commenter reasoned that employers could "manufacture" job positions to game the system by submitting for multiple job applicants, even though there is only one position available.

Response: DHS disagrees that the weighted selection process will allow companies to submit multiple registrations on behalf of an individual alien through subsidiaries or shell companies to increase their chance of selection. Importantly, the weighted selection process is built on the beneficiary centric registration selection process. All registrations submitted on behalf of each unique individual will be identified and grouped together. If more than one registration is submitted for a beneficiary, USCIS will use the lowest equivalent wage level provided in any of the registrations submitted on that individual's behalf when determining the weight to be accorded to that beneficiary in the weighted selection process. The number of registrations submitted on an alien's behalf does not impact the chance of selection. Further, the existing registration attestation requires an employer to certify that that the registration reflects a legitimate job offer. Through this rule making, DHS is also adding that "a valid registration must represent a bona fide job offer" to the regulatory language. *See* new 8 CFR 214.2(h)(10)(ii). A bona fide job offer is one that exists as described on the registration and petition and in which the employer intends to employ the beneficiary. If the employer is submitting registrations for different individuals for the same job opportunity, those registrations do not represent a bona fide job offer. As such, petitions filed based on these

registrations would be subject to denial or revocation of the petition's approval. *See* 8 CFR 214.2(h)(10)(ii) and (11)(iii).

7. Related Entities

Comment: A commenter remarked that the proposed rule references "related entity" at proposed 8 CFR 214.2(h)(10)(iii) and (11)(iii)(A)(*8*) but provides only general factors (familial ties, proximity, leadership structure), and questioned how USCIS would make these determinations and if there would be guidance or precedent decisions published to provide predictability. Another commenter expressed similar concern, adding that USCIS should revise 8 CFR 214.2(h)(2)(i)(G) to codify a clear, enforceable definition for the term "legitimate business need" and that it should explicitly operate pursuant to the objectives of the INA.

Response: The proposed regulations at 8 CFR 214.2(h)(10)(iii) and (11)(iii)(A)(*8*) use the term "related entity" as it has been understood and applied in the H-1B program for many years. The term is not new and USCIS issued policy guidance on this term in *Matter of S- Inc.,* Adopted Decision 2018–02 (AAO Mar. 23, 2018). Therefore, proposed 8 CFR 214.2(h)(10)(iii) and (11)(iii)(A)(*8*) will be finalized without change. DHS did not propose to amend the regulation at 8 CFR 214.2(h)(2)(i)(G) and DHS will not modify that provision in the final rule. Like the term "related entity," the term "legitimate business need" is not new and was likewise explained in USCIS-issued policy guidance *Matter of S- Inc.,* Adopted Decision 2018–02 (AAO Mar. 23, 2018).

8. Other Comments Related to Process Integrity

Comment: A commenter referenced proposed 8 CFR 214.2(h)(10)(iii), stating the proposed rule only provides one example of attempting to "unfairly increase the odds of selection" (reducing the proffered wage to a lower wage level). The commenter questioned what other scenarios would trigger this provision, and how USCIS would provide notice and opportunity to respond before making such determinations. A

commenter expressed that the proposed rule's integrity provisions would create particularly severe problems by allowing USCIS to deny or revoke petitions based on subjective determinations about whether changes between registration and petition represent attempts to "unfairly increase the odds of selection." The commenter added that the proposed rule provides limited guidance about what types of changes would be permissible versus impermissible. A different commenter suggested that the proposed rule would allow USCIS to deny a petition or revoke a petition approval if it appears the petitioner made a subsequent change to wage level after selection as evidence of inconsistency, even when ordinary business conditions may explain the adjustment.

Response: Whether an employer has attempted to unfairly increase the odds of selection is a case specific determination based on the facts in the record. USCIS will examine the registration, the original petition, and any subsequent petition to compare the offered positions, SOC codes, locations, and wage levels, along with the totality of the circumstances to determine whether the petitioner has established that the change in employment is not part of an attempt to game the selection process and increase the chance of selection.

As explained in the proposed rule, the petition must contain and be supported by the same identifying information and position information, including SOC code, provided in the selected registration and indicated on the LCA used to support the petition. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). The petition must also include a proffered wage that equals or exceeds the prevailing wage for the corresponding OEWS wage level in the registration for the SOC code in the area(s) of intended employment. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). USCIS may deny or revoke the approval of an H-1B petition that does not meet these requirements. However, in its discretion, USCIS may find that a change in the area(s) of intended employment between registration submission and

petition filing is permissible, provided such change is consistent with the requirement of a bona fide job offer at the time of registration.

For changes between an initial petition and subsequent new or amended petitions filed by the petitioner or a related entity, if the petition would lower the wage level that would have been selected in registration, USCIS would scrutinize whether the original offered position that was the basis of the registration and original petition was in fact bona fide or the employer was attempting to unfairly increase the odds of selection. In accordance with existing regulations, before denying a petition under 8 CFR 214.2(h)(10)(iii), the petitioner would be given notice of the issue(s) through a notice of intent to deny.

Comment: Numerous commenters expressed concerns regarding fraud and system abuse in the H-1B program as it relates to this rule. A few commenters remarked that the existing random, beneficiary-centric lottery, while imperfect, treats all registrants equally and avoids inequities and potential loopholes. Many commenters expressed concern that the proposed weighted selection process would do nothing to fix the systemic fraud and abuse issues in the H-1B program.

A commenter stated that USCIS has already established mechanisms for guarding against fraud and misrepresentation, and that the proposed rule would provide minimal benefit regarding program integrity, while disproportionately increasing the risk of penalizing employers for unavoidable discrepancies. Another commenter voiced opposition to the proposed rule and expressed that the proposed rule is a “half measure” to fix a system that harms U.S workers’ careers by prioritizing foreign labor. Another commenter suggested that without modernizing the visa cap and improving administrative efficiency, a wage-based selection process will only deepen existing challenges.

A commenter voiced concern about whether the proposed rule would adequately address fraud and enforcement, stating that vague provisions around wage calculation and job tracking could enable manipulation. Another commenter questioned whether the rule provides sufficient procedural clarity, remarking on the lack of detail on wage enforcement, worksite transfers, and post-approval wage amendments. A commenter expressed general concern about fraud in the H-1B program and questioned whether USCIS could effectively manage this issue. Similarly, another commenter said that USCIS and DOL lack the capacity to verify beneficiary qualifications and that the proposed rule could increase financial incentives to exploit the program through falsified credentials and kickback schemes.

Response: DHS agrees that enhancing the integrity of the H-1B program is important. This narrowly scoped rule seeks to build on the success of the beneficiary-centric registration selection process to reduce registration fraud while at the same time achieving the policy goal of incentivizing employers to use the H-1B program to employ highly paid, highly skilled workers. The rule includes provisions to prevent gaming of the weighted selection process as detailed previously, including provisions governing changes in wage, location, and position, as well as provisions addressing changes in amended petitions. Additionally, existing regulations also allow USCIS to address fraud or misrepresentation in the registration, LCA, or petition process through denial or approval revocation. Further, where USCIS determines that an employer is attempting to subvert the weighted selection process and has submitted false attestations, USCIS may refer the individual or entity who submitted a false attestation to appropriate Federal law enforcement agencies for investigation and further action, as appropriate. Although DHS declines to add additional anti-fraud provisions to this narrowly scoped rule, DHS will continue to look for ways to improve the H-1B program and to protect the interests of U.S. workers.

Comment: A commenter remarked that a result of the proposed rule could be the increased use of alternative visa categories and employment structures to avoid H-1B restrictions. The commenter suggested, for example, that employers unable to secure H-1B workers at desired wage levels might increase use of L-1 intracompany transferee visas, O-1 extraordinary ability visas, or other categories not subject to the numerical cap or wage-based selection.

Response: DHS is focused on ensuring the integrity of all the employment-based classifications and will continue to carefully adjudicate all benefit requests. Although DHS is aware of employers and individuals filing frivolous petitions for which they are not qualified, it is possible that an alien and his or her employer would qualify under more than one nonimmigrant classification. Moreover, the goal of this rule is to enhance the H-1B cap selection process, not to prevent aliens from seeking other classifications for which they may be eligible.

F. Other Issues Relating to the Rule

1. Alternatives to the Proposed Weighted Selection Process

a. Recommendations to Weight Wage Levels More Heavily

Comment: Some commenters expressed a preference for the wage-based approach that DHS finalized in 2021. Under that approach, DHS would adopt a selection process that would be fully determined by wage level, starting with selecting all level IV registrations and proceeding sequentially to levels III, II, and I only if the cap were not met. If, at any wage level, the number of applicants exceeds the remaining cap, then a random lottery should be conducted only among that wage level. Some commenters asserted that, while the proposed weighted approach would still be a notable improvement from the status quo, it would be less effective at protecting the interests of U.S. and foreign workers than the approach described in the 2021 final rule. Another commenter advocated for a "wage-based allocation system" modelled on the 2021 rule

stating that that system would advantage direct-hire employers, including start-ups and small businesses, and more effectively improve the H-1B visa allocation process in comparison to the proposed weighted selection. A different commenter stated that the proposed rule is insufficient to address the issues caused by the random lottery and provided several reasons why it preferred the 2021 rule, including: this rule still retains the element of randomness while the 2021 rule created more certainty; this rule will only minimally raise the median salary of H-1B workers compared to the 2021 rule; this rule still allows outsourcing firms to benefit; and the 2021 rule provided more benefits to U.S. early-career workers who would face reduced competition from H-1B workers.

Response: While the approach in the 2021 final rule was reasonable to facilitate the admission of higher-skilled or higher-paid workers, that rule did not capture the optimal approach. DHS believes that the weighted selection process as proposed in the NPRM and being finalized in this rule is the optimal approach because it increases the chance of selection for beneficiaries who will be paid a wage that corresponds to a higher wage level while not excluding those at lower wage levels, unlike the 2021 final rule. While DHS prefers that cap-subject H-1B visas be allocated in a manner that favors higher-paid, higher-skilled beneficiaries, DHS also recognizes the value in maintaining the opportunity for employers to secure H-1B workers at all wage levels. DHS believes that this rule appropriately balances the interests of U.S. workers with the interests of petitioning employers and the alien workers they seek to employ as H-1B nonimmigrants.

Comment: Commenters provided various alternatives that would prioritize registrations for higher level wages while giving less weight to registrations for lower wage levels than proposed. These commenters generally reasoned that level I and II workers have fewer skills, are more likely used by consulting companies to replace higher-paid U.S. employees, and that prioritizing level IV registrations would be truer to

the original purpose of the H-1B program since workers at higher wage levels better reflect Congress' intended recipients of H-1B visas as high-skilled, high-wage workers, among other reasons. For example, many commenters recommended that level IV registrations should have much higher chances of selection than just four times, whereas level I and II registrations should have much lower chances. Others recommended an allocation framework involving "pools" or "caps" for each wage level, wherein the allocation for level IV registrations would be the highest and would decrease in order of the remaining wage levels.

Response: DHS appreciates these suggestions but believes that the weighted selection process proposed in the NPRM and finalized in this rule is a reasonable approach because it increases the chance of selection for beneficiaries who will be paid a wage that corresponds to a higher wage level while not entirely excluding those at lower wage levels. With regard to the asserted benefits of the proposed alternatives, DHS believes the approach in this final rule similarly offers these benefits with respect to incentivizing higher wages, mitigating unfair competition to U.S. workers, and providing greater access to visas for higher-paid, higher-skilled beneficiaries.

Comment: A couple of commenters suggested that DHS should ensure 100% selection or guarantee "approval" of all level IV registrations. Likewise, some commenters recommended guaranteeing selection for levels III and IV, while excluding levels I and/or II entirely.

Response: It is unclear whether the commenters were suggesting guaranteed petition approval or guaranteed selection in the registration process for aliens at higher wage levels. In either case, DHS declines to adopt this suggestion. USCIS does not adjudicate registrations. Additionally, DHS declines to ensure 100% petition approval or guaranteed work visas to all aliens at certain wage levels. It is possible that the number of prospective alien H-1B beneficiaries at levels III and IV could exceed congressionally

established numerical limitations. Additionally, USCIS adjudicates every petition to ensure eligibility and does not offer blanket guaranteed approvals, regardless of proffered wage or wage level. DHS believes the proposed approach of weighting registrations (or petitions, as applicable) for selection based on a beneficiary's equivalent wage levels meets the goal of favoring higher-skilled and higher-paid aliens, while still ensuring the integrity of the registration process (or petition filing process, as applicable).

Regarding the commenters' suggestions to entirely exclude lower wage levels from the selection process, DHS prefers a weighted selection process that does not effectively eliminate the odds of selection for wage levels I and II. DHS reiterates that this rule strikes an appropriate balance between prioritizing high wage levels while also recognizing the value in maintaining the opportunity for employers to secure H-1B workers at all wage levels. This rule also preserves the opportunity for employers utilizing non-OEWS wage sources to be selected. DHS recognizes that there may be some occupations or geographic areas for which OEWS wage data is not available, or positions for which a private wage survey or CBA may be used to determine the required wage. In these cases, the registration might be assigned a level I wage and as such would be effectively precluded if registrations at lower wage levels were excluded. DHS believes that the weighted selection process finalized in this rule is optimal because it increases the chance of selection for those with wages that correspond to higher wage levels but does not effectively preclude beneficiaries from being selected solely because of variables, including OEWS data limitations. DHS believes that this rule appropriately balances the interests of U.S. workers with the interests of petitioning employers and the alien workers they seek to employ as H-1B nonimmigrants.

Comment: A commenter stated that DHS must cap the number of level I registrations, or else the weighted registration system would continue to have issues. The commenter reasoned that employers could still "manufacture" job positions to game the

system by submitting for multiple beneficiaries at low wage levels, therefore making it even less likely that higher wage levels would be selected.

Response: DHS appreciates the commenter's concern for potential gaming in the manner described. It is theoretically possible that all registrants will collude with each other to submit only level I registrations, such that this rule would not have the intended impact of incentivizing employers to hire higher-skilled H-1B workers. However, DHS does not believe this scenario to be likely. Further, under the existing registration process, all registrants must certify that: each registration represents a legitimate job offer; all of the information contained in the submission is complete, true and correct; and that they have not worked with or agreed to work with another registrant, petitioner, agent, or other individual or entity to submit a registration to unfairly increase a beneficiary's chances of selection. If DHS discovers that any of these certifications are not true, DHS may deny or revoke the petition based on the underlying registration and potentially pursue other appropriate action. Through this rulemaking, DHS is also adding that "a valid registration must represent a bona fide job offer" to the regulatory language (*see* new 8 CFR 214.2(h)(10)(ii)) and updating the registration attestation regarding a legitimate job offer to attest to a "bona fide job offer." These provisions should further deter any registrant from colluding with other registrants to manipulate wage levels during the registration stage, thus rendering a cap on the number of level I registrations unnecessary.

b. Recommendations to Select or Weight by Highest Salary, Not Wage Level

Comment: Many commenters recommended allocating all H-1B visas by the highest offered salaries rather than wage levels. Allocating by salary would guarantee that the highest offered salaries would be selected, without any random lottery elements. The commenters generally explained that this alternative would ensure that the rule better advances the objectives DHS laid out in the NPRM of increasing the share of H-1Bs going to high-skilled, high-paid workers, and better aligns with the program's intent to

fill specialized positions while ensuring fair compensation that does not undercut domestic wages, among other reasons. A commenter similarly wrote that a wage-based system would provide greater employer certainty, incentivize competitive wages, advantage direct-hire employers over outsourcing firms, and increase opportunities for international graduates from U.S. institutions. Another commenter explained that allocating visas according to wage would yield a more precise reflection of current market demand and better reward petitioners who pay compensation that reflects market demand. Some commenters stated that actual salary is a better measure of skill rather than wage level, and cited research that, according to the commenters, showed that the proposed rule would increase median H-1B salary by 3 percent, while a compensation-based system could lead to a 52 percent increase. A commenter stated that ranking by salary would alleviate uncertainty and decrease the likelihood of fraud by companies miscoding or misclassifying their sponsored workers.

Conversely, another commenter expressed opposition to other commenters' proposals for a selection method based solely on salary. The commenter stated that under the pure salary-based allocation system, they would expect a greater share of H-1B visas being allocated to computer and engineering occupations in high cost-of-living urban and coastal areas. The commenter reasoned that this would undermine the H-1B program's goals, since such occupations are not experiencing labor shortages. Furthermore, the commenter remarked that this kind of salary-based allocation system would be clearly inconsistent with the statute, and that since all occupations have value, the H-1B program should not use an allocation system that would mostly award visas to tech companies

Response: DHS declines the suggestions to select registrations purely based on the highest salary. DHS believes that selecting registrations or petitions, as applicable, solely based on the highest salary would unfairly favor certain professions, industries, or geographic locations, such as computer and engineering occupations in high cost-of-

living urban areas as mentioned by a commenter. DHS believes that prioritizing generally based on the highest OEWS wage level that the proffered wage equals or exceeds for the relevant SOC code and in the area of intended employment is the better alternative. While DHS appreciates the commenter's concerns about the need to alleviate uncertainty for employers, DHS also needs to balance this with the countervailing interest H-1B employers have in maintaining the opportunity to secure workers at all wage levels in all eligible occupations, and without introducing unintended preference for geographical locations.

DHS is also concerned about miscoding or misclassifying through SOC code manipulation but believes it has sufficient enforcement mechanisms in place to deter and penalize such behavior. DHS must also balance the concerns for SOC code manipulation with the concerns of potentially shutting out entire professions, industries, or geographic locations that happen to be lower paying.

Regarding the comments that this rule would not sufficiently increase the median H-1B salary, DHS appreciates these concerns but notes that the primary goal of this rule is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels, to better serve the congressional intent for the H-1B program. Moving to a weighted selection process is expected to increase the number and share of equivalent level IV wage selections, resulting in higher average offered wages among selected H-1B cap-subject workers. While the expected increase to average H-1B wages may not be as much as the increase that might result from the compensation-based selection system advocated by these commenters, DHS considered the disadvantages of such an alternative, e.g., unfairly favoring certain professions, industries, or geographic locations, to outweigh the benefits.

c. Recommendations to Account for Geographic Differences

Comment: Commenters provided various recommendations to adjust wages or wage levels to account for geographic differences. These recommendations included: considering national benchmarks or adjusted weighting to avoid disadvantaging beneficiaries in major metro areas; apply a nationally uniform wage-level standard to better reflect the value of high-skilled labor; set wage limits based on the highest wage levels in the State where a business operates (with the example that entry-level programmer salaries in states like California or Washington are typically at least 30 percent higher than in Midwestern states, such as Michigan); normalize wage levels across regions; adjust wage levels based on local statistical areas; normalize wages for cost-of-living or purchasing power parity; and incorporate cost-of-living or regional adjustments into the weighting model so the rule is consistent for high-skilled workers in all U.S. regions.

Response: DHS declines to adopt these alternatives. This final rule neutralizes geographic differences in salary amounts by taking into account the area of intended employment when weighting registrations. DHS disagrees that additional adjustments for national benchmarks or a nationwide wage-level standard would improve the proposed weighted selection process, or that it is necessary to set wage limits based on the State where the business operates. Similarly, DHS does not believe that normalizing wages across regions, or adjusting wages based on local statistical areas is necessary, and such recommendations related to the prevailing wage system go beyond DHS's expertise. While DHS appreciates the additional recommendations, DHS does not believe that they are necessary or feasible to incorporate into a weighted selection process that is efficient to administer in a fair and effective way.

d. Recommendations to Account for Multiple Factors

Comment: A few commenters suggested that DHS could make adjustments to salary to account for various factors. A commenter said that if directly weighting salaries,

DHS could adjust for various factors, including: age and experience to ensure that workers who are early in their careers (who may earn less, but are likely to make larger economic contributions over their careers), are still able to get H-1B visas, or alternatively, to prioritize workers with higher skill levels by assigning weights based on applicants' highest degree and major field, with larger weights for advanced degree holders in science and engineering majors. One commenter stated that a salary-based selection could be adjusted to select high-earning, high-value workers by projecting earnings over a lifetime, for example, through adjusting for age by taking the net present value of the discounted future earnings stream. A different commenter recommended using actual wages paid rather than wage levels as the selection metric, potentially adjusted for geography and age. The commenter provided analysis that they characterized as showing that this approach would decrease H-1B outsourcing while increasing the share going to F-1 students, especially Ph.D.s. The commenter added that such a system would be harder to game than wage levels and better achieve the agency's goals. A commenter suggested normalizing wages nationally by adjusting for cost of living and region, calculating an adjusted "national equivalent" wage percentile to ensure fairness across geographic regions. Another commenter similarly requested that DHS recognize regional differences in wage structures so that businesses outside major cities are not unfairly excluded. Some commenters recommended tying H-1B pay scales to inflation. Another commenter suggested prioritizing by wages while also implementing weighted adjustments for designated critical shortage occupations–such as healthcare providers in medically underserved communities, teachers in low-income school districts, and national security-relevant technical occupations in lower-cost regions–determined in coordination with certain government agencies.

Response: DHS believes that selecting registrations (or petitions, as applicable) based on the highest salary would unfairly favor certain professions, industries, or

geographic locations. DHS believes that prioritizing generally based on the highest OEWS wage level that the proffered wage equals or exceeds for the relevant SOC code and in the area of intended employment is the better alternative.

DHS also believes that combining and weighing multiple factors is not feasible, as such an approach could be overly complicated, unpredictable, and subjective. DHS believes that incorporating adjustments based on multiple factors, such as the geographic area, cost of living, the beneficiary's age, projected earnings over a lifetime, and inflation would add unnecessary complexity into the process and frustrate the goal of administering the cap selection process in an efficient and effective manner. Some of these factors could change over time or may be subjective, which increases the chance of unpredictability and undermines some of the commenters' concerns about the need for predictability. Therefore, DHS prefers to use the OEWS wage level system that is already used in the H-1B program, publicly accessible, and updated annually by DOL. DHS further notes that the OEWS prevailing wage already takes into consideration variations in wages due to different occupations and geographic locations.

Regarding the suggestion to reserve visas or otherwise adjust weighting for critical shortage occupations in the healthcare industry, DHS believes that employers should be able to utilize the H-1B program within a broad range of occupations and industries. Further, DHS reiterates that H-1B petitions for aliens who are employed by, or have received offers of employment at, U.S institutions of higher education, nonprofit entities related to or affiliated with U.S. institutions of higher education, or nonprofit research organizations or governmental research organizations are exempt from the H-1B cap. *See* INA sec. 214(g)(5), 8 U.S.C. 1184(g)(5). Many employers and aliens in the healthcare industry described by this commenter would be cap-exempt and therefore not impacted by this rule. In the scenarios where such aliens are not cap-exempt, DHS believes this rule will have a positive impact by increasing the chance of selection for

higher-paid, higher-skilled foreign workers for employers in all industries and encouraging employers to hire U.S. workers.

Comment: A commenter suggested that DHS should weight by the OEWS wage level that corresponds to the requirements of the position, rather than focusing on the salary being paid. The commenter said that this method would ensure that the most highly skilled and talented employees have the highest odds of selection, rather than incentivizing employers to artificially increase wages regardless of the skill requirements of the position.

Response: DHS continues to believe that salary, as demonstrated by the equivalent OEWS wage level, remains the better proxy for skill. Relying only on the OEWS wage level for each petition, as determined by the education, skill and responsibility required for each position, would only reflect the requirements for a position and would not necessarily benefit an employer seeking to hire the most talented candidate for a position, which undermines the primary purpose of this rule.

e. Recommendations to Preserve Opportunity for Lower Wage Levels

Comment: A few commenters expressed the need to preserve opportunity for all wage levels to be selected, claiming that the rule will disproportionately advantage level IV registrations. The commenters provided various alternatives intended to mitigate the risk of overconcentration and preserve fair competition across wage levels, including: capping the number of weighted entries assigned to higher wage positions; setting a maximum selection weight to avoid giving higher wage levels an "overwhelming" advantage; setting a proportional selection floor or tiered quota that would ensure opportunity for all wage levels; reserving a proportion of H-1B visas for recent graduates as level I and II applicants, or at each wage level; and increasing the selection chances for level II applicants to ensure equitable access for talented professionals across all wage levels.

Response: DHS declines to adopt these suggestions, as the goal of this rule is to implement a weighted selection process that would generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. Further, this rule already preserves the chance that registrations with wages corresponding to any one of the four wage levels may be selected. As stated in Table 13 of the NPRM and the analysis accompanying this final rule, this rule is expected to provide an estimated 89,911 level I registrations a 15.29% chance of selection and an estimated 177,216 level II registrations a 30.58% chance of selection based on a simple weighted-probability calculation. While the Monte Carlo simulation may be more difficult for some commenters to interpret, the results presented in row F of Table 13 show an estimated 15,330 selected registrants out of 89,911 for level I, reflecting a slightly higher probability than the calculated 15.29%. Because the Monte Carlo simulation accounts for non-replacement in the selection process, the probabilities will be closer to the simple weighted probability but not exact. DHS believes this result, summarized in row F of Table 13, is sufficient to address the commenters' concerns about ensuring opportunity for all corresponding wage levels.

f. Recommendations to Set Minimum Salaries for Each Wage Level

Comment: Numerous commenters proposed setting various minimum salaries for each wage level. The commenters' suggestions varied widely, requesting DHS to set the level I minimum salary as low as $120,000 per year to as high as $175,000 per year, and the level IV minimum salary to be as low as $250,000 per year to as high as $800,000 per year.

Response: DHS declines the suggestions to set minimum salaries for each wage level. The weighted selection process will use the OEWS wage levels, which is already used in the H-1B program, publicly accessible, and updated annually. Importantly, OEWS prevailing wages and wage levels are set by DOL. DHS does not have the

expertise nor manpower to create an entirely new prevailing wage system that would need to be regularly updated, so this is not a feasible alternative.

g. Recommendations Regarding SOC Codes

Comment: Some commenters cautioned that weighting by wages could unfairly weight identical SOC codes differently based on location. The commenters recommended DHS weight offers by SOC codes and "local SOC percentile" so that offers that are equally competitive for their respective location receive the same lottery weight, regardless of location. Likewise, a commenter noted that the proposed weighting approach could unfairly disadvantage professionals in certain occupations and locations; this commenter recommended that USCIS weight wages within each occupation rather than across all fields.

Response: DHS believes that the weighted selection process proposed in the NPRM and finalized in this rule addresses the concerns raised by these commenters. Wage levels are based on the OEWS survey wage distribution for a specific occupation and location, with wage level I currently set at approximately the 17th percentile of the OEWS wage distribution for the relevant occupation in the relevant location, wage level II set at approximately the 34th percentile, wage level III set at approximately the 50th percentile, and wage level IV set at approximately the 67th percentile. 90 FR 45986, 45990 (Sept. 24, 2025). Accordingly, by using wage levels, the weighted selection process takes into consideration variations in wages due to different occupations and geographic locations and avoids favoring particular occupations or locations.

h. Recommendation Regarding Four-Digit SOC Codes

Comment: In order to mitigate the adverse effects of occupational misclassification during registration, a commenter recommended that employers use a four-digit, instead of a six-digit, SOC code to identify the wage level for registration purposes. According to this commenter, employers would select the six-digit occupation

with the highest median wage within its four-digit SOC family, and then map their proffered wage to the corresponding wage level. For example, applications with any computer occupation (15-12XX) would map their wage levels to 15-1221, Computer and Information Research Scientists. The commenter concluded that correcting occupational misclassification this way is analogous to the proposed rule's handling of multiple worksite locations and would prevent gaming of the weighted selection process through the selection of favorable SOC codes.

Response: DHS is also concerned with employers gaming the system through SOC codes and appreciates this suggestion. However, selecting the six-digit occupation with the highest median wage within its four-digit SOC family code – rather than the six-digit SOC code corresponding to the nature of the job offer – could cause confusion for stakeholders as it deviates from long-standing DOL prevailing wage guidance on how to choose the correct SOC code and wage level for the employer's job opportunity.[89] DHS believes there are sufficient provisions to detect and deter occupational misclassification during registration and declines this suggestion.

i. Recommendations Related to U.S. Education

Comment: Commenters provided various suggestions on how to prioritize registrations based on a prospective beneficiary's U.S. education or degree. Some commenters suggested prioritizing graduates from U.S. universities regardless of their starting salary level. To retain talent at all levels, several commenters suggested giving additional weight or preference to graduates of U.S. institutions, with some commenters suggesting extra consideration for graduates of top-tier schools, graduates completing U.S. master's or higher degrees, or graduates of highly ranked U.S. universities. These commenters reasoned that the selection process should reward individuals who are

[89] DOL, ETA, Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (last modified Nov. 2009), https://www.dol.gov/sites/dolgov/files/eta/oflc/pdfs/npwhc_guidance_revised_11_2009.pdf.

already invested in U.S. institutions, and have paid high amounts of tuition and undergone a rigorous admission process, and successfully assimilated into U.S. culture and values. Some commenters specifically recommended that DHS give priority to individuals who have completed OPT in the United States or who are in F-1 status.

Some commenters recommended exempting registrations towards the master's degree cap from the proposed wage-based weighting. Other commenters wrote that only beneficiaries with Ph.D.s should be admitted, or that beneficiaries with Ph.D.s should automatically be assigned to level IV in the registration. A commenter proposed a qualification-based allocation system that would assign higher selection priority to Ph.D. holders, followed by master's degree holders, and then bachelor's degree holders.

Some commenters suggested prioritizing applicants with U.S. degrees in STEM fields. A commenter recommended, as one potential alternative to the proposed wage-weighted selection process, that DHS apply weighting by education level with higher weights for advanced degrees, particularly in STEM fields, to prioritize beneficiaries whose skills most closely align with U.S. economic needs, reasoning that this would avoid distortions inherent to a percentile-based OEWS wage level weighting. More specifically, another commenter recommended awarding one additional registration chance to U.S.-educated applicants who submit a registration within 12 months of graduation, with a second additional chance for graduates in critical STEM fields identified by the administration. Some commenters recommended exempting or otherwise prioritizing STEM Ph.D.s, to ensure intelligent individuals, invested in the U.S. education system, are able to contribute to the United States, even if they have low wages.

Response: DHS declines these suggestions to further prioritize registrations based on a prospective beneficiary's U.S. education or degree. Registrations or petitions, as applicable, submitted for beneficiaries who have earned a master's or higher degree from

a U.S. institution of higher education already have a higher chance of selection through the administration of the selection process. DHS has already reversed the order in which USCIS selects registrations or petitions, as applicable, which resulted in an increase in the number of H-1B beneficiaries with a master's degree or higher from a U.S. institution of higher education selected.[90]

DHS declines to adopt the suggestion to give every F-1 graduate an equal entry-level opportunity, as this goes against the stated goal of the rule, which is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. DHS also declines to ensure that U.S.-educated recent graduates, including those in critical fields, are given increased weighting in the selection process. The weighted selection process discussed in the NPRM is intended to incentivize employers to pay a higher proffered wage to a certain beneficiary to be more competitive in the H-1B selection process. 90 FR 45986, 45990 (Sept. 24, 2025). This process also maintains the opportunity for employers to secure H-1B workers at all wage levels, thus it will not completely leave out aliens in entry-level positions. Similarly, DHS declines to give priority to aliens who completed OPT in the United States.

DHS believes that prioritizing an alien based on their degree field, including whether their degree is from a STEM field, is not necessary. The purpose of this rule is not to prioritize the admission of foreign STEM workers. Further, DHS generally notes that prioritizing registrations on multiple characteristics—for example, a STEM degree plus an advanced degree—is not feasible, as such an approach could be overly complicated, unpredictable, and subjective. Therefore, DHS declines to adopt the commenters' suggestions.

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[90] "Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap Subject Aliens," H-1B Registration Final Rule, 84 FR 888, 890 (Jan. 31, 2019).

Comment: Some commenters recommended exempting international students who have graduated from U.S. institutions from the visa cap or wage selection requirements, or both. Another commenter recommended using a lottery system for graduates already in the United States and only applying wage-based selection to beneficiaries outside the United States. One commenter stated support for expanding and preserving the advanced degree exemption selection.

Response: DHS did not propose exempting students who have graduated from U.S. institutions from the cap or granting this group a carve-out from the proposed rule and declines to do so now. However, many students may already qualify for the annual, numerically limited exemption from the 65,000 cap for H-1B workers who have earned a qualifying U.S. master's or higher degree. *See* INA sec. 214(g)(5)(C), 8 U.S.C. 1184(g)(5)(C). DHS does not have the authority to expand this congressionally created, numerically limited exemption.

j. Recommendations Related to Particular Industries, Occupations, and Employer Sizes

Comment: Commenters expressed concerns that the wage-based approach does not account for wage variations across various industries and sectors. For example, some commenters recommended that DHS consider additional weighting for registrations in "critical sectors" or "essential industries" such as AI, quantum computing, semiconductors, cybersecurity, aerospace, and healthcare. Other commenters proposed implementing industry carve-outs or quotas for "critical sectors" to ensure that these roles are prioritized over others.

Some commenters requested alternatives specific to the tech industry. For example, a commenter said the proposed weighting approach should only apply to the tech industry where employers can afford high wages, while registrations from all other industries should be weighted as level IV by default. Other commenters recommended

disallowing level I or II registrations from tech industry companies, and some commenters recommended revising the rule to ensure that it does not unfairly favor the IT industry.

Several commenters noted that certain industries like manufacturing or some engineering fields generally pay lower salaries compared to other industries, such as the tech industry, and recommended that H-1B visa slots be allocated by industry, rather than through a general pool. A commenter urged USCIS to adapt the proposed rule to mitigate negative effects on the manufacturing sector, particularly by reserving a portion of the cap or enhancing selection odds for lottery registrations for small and medium-sized manufacturers applying for H-1B visas for engineering and similar roles.

Other commenters expressed concern that the proposed rule disadvantages employers in lower paying, non-tech sectors, and recommended various measures, such as bonus weighting or special carve-outs. Commenters said the proposed approach may unfairly disadvantage public sector and local government functions where wages are typically lower. A commenter expressed concern about the proposed rule's effect on school districts' ability to address staffing shortages amid a national teacher shortage and recommended DHS prioritize K-12 teaching as a priority occupation eligible for additional weighting. A commenter suggested prioritizing teachers, especially in areas of shortage, such as math and science. Other commenters suggested various alternatives for universities, nonprofits, and research institutions, as well as for small employers and startups. These commenters indicated that these alternative weighting methods would help ensure employers are not disadvantaged solely because they are unable to pay high salaries compared to other employers.

Commenters suggested exceptions for their industry, such as exempting all alien physicians from the rule's weighted selection process, or weighting all healthcare workers at wage level IV. Another commenter generally recommended exempting all

doctors and nurses from the proposed rule. Several commenters requested special consideration for healthcare professionals in underserved and rural areas. For example, a commenter recommended implementing exceptions for physicians practicing in shortage areas and in lower-paying but needed specialties like primary care. Another commenter suggested that DHS consider special weighting or exemption for healthcare occupations designated by DOL as shortage occupations or listed on Schedule A. A different commenter recommended adjusting the weighting formula for occupations where supervised clinical training is required, including for occupational and physical therapists, noting that the healthcare field depends on a structured, supervised clinical hierarchy that by definition are wage levels I or II. Another commenter recommended that the rule exclude the legal industry, stating that big law firms already pay high salaries and thus would be unfairly advantaged in the weighted lottery.

Response: DHS declines to adopt special carve outs for certain industries or sectors or give additional weighting for registrations in "critical sectors" or "essential industries." Similarly, DHS declines to provide exemptions, weighting, or other special treatment for small businesses, non-profits, the public sector, startups, or other specific occupations or fields from the rule. While DHS appreciates the challenges faced by certain sectors, industries, and types or sizes of employers, carving out exceptions for some would be highly problematic. DHS believes that such an approach would be overly complicated, unpredictable, and subjective. For example, DHS recognizes that there are many occupations that can be considered "critical" or "essential" now but could change in the future. Making these types of determinations is not feasible for efficiently conducting the registration selection process on an annual basis. Therefore, DHS declines to adopt these commenters' suggestions.

k. Recommendations to Weight Other "Merit-Based" Factors Related to the Petitioner

Comment: Expressing concern that the proposed rule would not achieve its goals, multiple commenters recommended that DHS consider alternatives that incorporate a more "merit-based" approach that would weight multiple factors. Commenters provided various suggestions for factors that are specific to the petitioning employer, such as, but not limited to: the petitioner's industry and whether such industry is critical, essential, or important to the national interest; company type and size; occupational and labor-market shortages; industry or occupational need; employer demand or need for the position; the nature of the job duties, including the level of complexity or rarity of the job; societal impact; employer credibility and compliance history; whether the petitioner is in a "high-unemployment commuting zones and for occupations with plentiful domestic supply"; the employer's percentage of "local" or U.S. workers; or whether the hiring of the foreign worker displaces a U.S. worker. The commenters generally claimed that weighting various factors would make the lottery process more fair and balanced, as the proposed rule's approach of using salary as a proxy for skill may be skewed towards certain types of employers.

Response: DHS declines to adopt the commenters' suggestions. As previously discussed, DHS believes that identifying and weighing multiple factors is not feasible, as such an approach could be overly complicated, unpredictable, and subjective. Incorporating multiple factors would add unnecessary complexity into the process and frustrate the goal of administering the cap selection processing in an efficient and effective manner. Further, some of these additional factors, such as high unemployment commuting zones or whether the employer recently conducted layoffs, are not feasible for efficiently conducting the selection process on an annual basis and may involve determinations that are beyond DHS's expertise.

Furthermore, the goal of this rulemaking is not to favor employers with certain characteristics in the allocation of H-1B visas. Rather, the goal of this rule is to efficiently

and effectively implement a weighted selection process that would generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens.

l. Recommendations to Weight Other "Merit-Based" Factors Related to the Beneficiary

Comment: Numerous commenters requested DHS consider various factors that are specific to the individual beneficiary. These factors include, but are not limited to, the beneficiary's: degree field; industry certification; entrepreneurial promise; whether the beneficiary is a "founder" of a bona fide startup or is an owner of the petitioner; U.S. work history and professional experience; seniority; professional tenure; patents, research contributions; personal references; commitment to professional development; demonstrated expertise in critical technology or STEM fields; whether the beneficiary has completed or are still studying under OPT; length of legal residence in the United States; IQ; and English proficiency. The commenters generally claimed that weighing various factors would make the lottery process more fair and balanced, as the proposed rule's approach of using salary as a proxy for skill does not capture all indicators of a beneficiary's value, including his or her talent, potential, and contributions to an employer.

Some commenters suggested giving higher weight to beneficiaries based on the number of prior H-1B registration attempts, such that a person in their second or third attempt would get a higher priority. Another commenter made a similar recommendation, but added that for candidates that are selected but do not apply, their chances should be reduced if they enter the lottery again. Other commenters suggested providing "last-chance" priority (e.g., +1 weight or guarantee minimum selection) for students transitioning from F-1/OPT to H-1B. Another commenter said the rule should grandfather current F-1/OPT cohorts and phase-in changes, so current students are not suddenly trapped.

Response: DHS declines to adopt the commenters' suggestions. As previously discussed, DHS believes that identifying and weighing multiple factors is not feasible, as such an approach could be overly complicated, unpredictable, and subjective. DHS acknowledges that salary is a proxy for skill, but maintains that this approach is reasonable and optimal because it provides ease of implementation, predictability, and objectivity that would not be found in a multi-factor approach, and accomplishes the policy goal of increasing the chance of selection for beneficiaries who will be paid a wage that corresponds to a higher wage level.

Regarding the suggestions to specifically consider a beneficiary's prior H-1B registration attempts or time left in F-1 status, DHS does not believe these factors are relevant to a beneficiary's skill level. As explained in the NPRM, the purpose of the weighted selection process is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. Facilitating the admission of higher-skilled workers would benefit the U.S. economy and increase the United States' competitive edge in attracting the "best and the brightest." 90 FR 45986, 46011 (Sept. 24, 2025). Giving priority to F-1 students or beneficiaries solely because they have made several unsuccessful attempts to obtain an H-1B visa would not achieve this purpose.

Comment: A commenter recommended that USCIS allow companies to purchase additional chances in the lottery for particular candidates, reasoning that this would increase the likelihood of selection for priority candidates while remaining consistent with the lottery system's intent and avoiding wage discrimination against U.S. employees. Citing two articles, another commenter said that a better way is to prioritize workers with greater economic value by "auctioning" to employers the right to hire a foreign worker through the H-1B program.

Response: DHS declines to allow companies to "purchase" or create an "auction" as suggested. Similar to DHS's concerns with a selection method based purely on the

highest salary, DHS believes that auctioning registrations to the highest bidders would favor large corporations with more resources. Further, with respect to the concerns about wage discrimination against U.S. employees, as explained elsewhere, DHS does not agree that the rule would result in or encourage such discrimination. The rule does not mandate what wages employers must pay their employees and does not require employers to artificially raise wages. DHS believes businesses are unlikely to offer higher wages if the employee's skills do not justify the cost. DHS expects that companies will continue to make business decisions that align with their operational and financial interests.

m. Other Recommendations Regarding the Registration Process

Comment: Commenters suggested that the proposed weighted selection process could still be gamed unless DHS restricts the maximum number of registrations that may be submitted by a single company or its affiliated entities.

Response: While DHS appreciates the concerns the commenters raised, the intent of the weighted selection process is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels. It is unclear that limiting the maximum number of registrations a company or related entity may submit in a fiscal year would accomplish this goal. Further, it would not be possible to determine at the registration stage whether a registrant is affiliated with or related to another registrant, as USCIS does not adjudicate the registration. Therefore, DHS declines this suggestion.

Comment: A commenter suggested, without further elaboration, "integrating a beneficiary-centric appeal process" for workers to report occurrence of wage reduction or misrepresentation.

Response: DHS is unclear what a "beneficiary-centric appeal process" means. Regardless, DHS encourages individuals to report instances of wage reduction or

misrepresentation to DOL or USCIS, depending on the specific facts, through existing channels. DHS maintains a tip form where individuals can report these and other issues of compliance and fraud.[91] When investigating tips received, USCIS also works with Immigration and Customs Enforcement and DOL, referring cases as needed to those agencies.

n. Recommendations to Strengthen Enforcement Actions

Comment: Many commenters stated that DHS should strengthen its enforcement actions against bad actors and fraudulent companies and provided alternative anti-fraud measures that DHS could pursue instead of broadly changing the registration system. Some of these commenters stated that targeted or more effective enforcement is preferable to broadly changing the entire registration system which could impact bona fide employers and prospective beneficiaries. Some commenters similarly reasoned that instead of adding burdens on all applicants, USCIS should focus on tracking, auditing, and penalizing the bad actors or fraudulent agencies thereby not risking harming the entire system when only a minority of players are responsible for abuses. The commenters' various anti-fraud recommendations included:

- Increased targeted audits and compliance checks, background checks;
- Post-approval and post-activation audits to verify that employers follow through on wage and job commitments;
- Run post-selection audits against DOL OEWS and LCA data;
- Annual compliance reporting to monitor whether wage commitments are being honored;
- Mandatory post-selection wage verification to confirm that promised wages are actually paid;

[91] *See* the ICE Tip Form for reporting suspected immigration benefit fraud and abuse, https://www.ice.gov/webform/ice-tip-form.

- Verified reporting of work hours and actual worksite locations to ensure compliance with labor conditions;
- Stricter oversight of remote work arrangements to prevent misrepresentation of job locations;
- Upfront scrutiny of SOC code classifications to reduce manipulation of job categories;
- Increased penalties for fraudulent registrations, violators, and those who have misrepresented facts.
- Closer scrutiny of certain types of companies; and
- Bans or caps on registrations from firms with patterns of overuse;
- Bans on outsourcing companies or third-party placements.

These commenters said that targeted enforcement would better protect program integrity while preserving fairness for bona fide petitioners.

Response: While DHS agrees with the commenters that stronger measures against fraud and abuse of the H-1B program are necessary, DHS disagrees that the weighted selection process is unnecessary. The changes finalized in this rule generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels, to better serve the congressional intent for the H-1B program. This rule represents an important step the agency is taking towards improving the integrity of the overall H-1B program.

With respect to the suggestions to increase post-selection verification efforts, USCIS officers are trained to appropriately scrutinize each petition to ensure eligibility during the adjudication process, including scrutinizing the wage level, SOC code, and area of intended employment selected on the LCA to determine that the LCA properly corresponds to the petition, and ensuring that the petition includes the same identifying and position information. If USCIS were to determine that the statement of facts

contained on the registration or petition submission was inaccurate, fraudulent, materially misrepresents any fact, or was not true and correct, USCIS would deny the petition or, if approved, would revoke the petition approval. *See* 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*2*). In addition, USCIS would deny (or revoke, if approved) an H-1B cap-subject petition if it were not based on a valid selected registration for the beneficiary named or identified in the petition. *See* 8 CFR 214.2(h)(10)(ii) and (11)(iii)(A)(*6*).

Regarding comments about increasing upfront scrutiny at the registration stage, USCIS does not adjudicate registrations. Because registration is not intended to replace the petition adjudication process or to assess eligibility, USCIS cannot feasibly determine at the time of registration selection whether a registrant has manipulated SOC codes.

Finally, it is noted that commenters provided various other suggestions about increasing enforcement or anti-fraud activities. Although DHS is concerned about preventing fraud and abuse in the H-1B program, this rule is narrowly focused on governing the process by which USCIS selects H-1B registrations for unique beneficiaries for filing H-1B cap-subject petitions. Therefore, DHS considers those comments out of scope. However, DHS may consider ways to improve the integrity of the H-1B program through future rulemakings and policy.

o. Recommendations for Pilot Program

Comment: Some commenters generally recommended starting with a pilot program to assess the proposed changes on a smaller scale, rather than finalizing the rule as proposed. Other commenters recommended that DHS proceed with a pilot program, using a multi-factor model, including weights for occupational shortages, role complexity, and employer size, with wages normalized to localities and published transparently, accompanied by a rigorous impact analysis.

Response: DHS declines to adopt these recommendations and will finalize the rule as proposed. As previously noted, DHS believes that identifying and weighing

multiple factors is not feasible, as such an approach could be overly complicated, unpredictable, and subjective.

p. Recommendations for Staggered Filing

Comment: A commenter who supported the proposed rule recommended having staggered filing deadlines for petitions by wage levels as an alternative in case the proposed rule is met with legal challenges. Under this alternative, USCIS could have a first filing period, where only petitions with jobs paying level IV are considered. Once all the level IV petitions are submitted and approved, then a second filing period at a later date could be set to receive only petitions with jobs paying level III wages. After those are collected and approved, if there are any visas remaining under the H-1B cap, then a filing period for level II wages would be next, and finally a filing period for level I. This way, all of the petitions would not be submitted at once, thereby still allowing USCIS to adjudicate and allocate petitions "in the order in which" they were filed, as the statute requires. If there were more petitions than available H-1B slots at a particular wage level, there could be a "mini-lottery" within that wage level. Another commenter similarly stated that the proposed weighted selection scheme is lawful but additionally suggested amending the proposed process to "more closely align with the statute." Specifically, the commenter suggested that USCIS create different "application windows" for each wage level starting with wage level IV and proceeding in descending order such that when USCIS selects a level IV petition it will have been received before any petition with a lower wage level, consistent with INA sec. 214(g)(3). The commenter asserted that this process would offer increased predictability and would better withstand legal challenges.

Response: DHS declines the suggestions to use staggered filing deadlines or petition filing windows by wage levels. DHS believes these suggestions are not necessary because, as explained above, this rule is consistent with and permissible under DHS's

general statutory authority provided in INA secs. 103(a), 214(a), and (c); 8 U.S.C. 1103(a), 1184(a), and (c); and HSA sec. 102, 6 U.S.C. 112.

2. Effective Date and Implementation

Comment: Some commenters who supported the rule urged DHS to implement the changes immediately before the next H-1B registration season.

Response: This rule will be effective in time for the upcoming FY 2027 registration period, which is set to begin in March 2026.

Comment: Some commenters who disagreed with the proposed rule said that, if USCIS were to finalize the proposed rule, it should refrain from implementing the proposed rule for the FY 2027 H-1B registration season because changes so late in the year would adversely impact U.S. employers, immigration lawyers, and individuals. The commenters explained that hiring decisions and filing processes and procedures have already begun based on the existing registration system, so delaying implementation until after the FY 2027 cap filing season would give the regulated community time to adapt to the new process. A commenter stated that a phased-in implementation approach would be consistent with principles of regulatory fairness and would allow stakeholders to adjust hiring strategies and educational planning accordingly. Likewise, a commenter suggested that implementation should be delayed until at least the FY 2028 H-1B cap filing season. The commenter stated that USCIS should provide a minimum of six months in advance of any H-1B registration period, as U.S. employers need time to adapt their recruitment procedures, hiring process, and filing process to the new selection process. Another commenter suggested withdrawing or delaying the implementation of the rule by two years. A different commenter suggested implementing the weighting gradually, with transparent data collection and public reporting on effects by wage level, employer size, and geographic area. A few commenters urged USCIS to engage directly with stakeholders before finalizing any wage selection rule.

Response: DHS is not delaying the implementation of this rule. DHS believes that this rule is being published with sufficient time to allow employers to plan appropriately prior to the start of the registration period for FY 2027. While some petitioners may benefit from additional time to adjust to the new weighted selection process, DHS does not believe that petitioners will face significant adverse impacts with the implementation of this change in the selection process and believes that employers have sufficient time to make any decisions they believe are needed as a result of this rule, such as increasing proffered wages to increase the odds of selection. In addition, DHS believes that it is important to implement the rule as soon as possible to prevent further adverse impacts on U.S. workers who are competing with lower paid H-1B workers.

3. Processing Time Outlook

Comment: Some commenters remarked that the current system is already difficult for people to navigate, and the proposed rule would make the system more confusing and add unnecessary complexity and burden. Other commenters similarly noted that the proposed weighted selection process would be far more complex, resource intensive, and lead to adjudication delays, inconsistent adjudications, and possibly filing errors or erroneous rejections. A commenter expressed concern that the new, complex weighted process would increase the risk of technical system errors and unfair rejections due to factors outside of the petitioner's control, which could lead to delays and add on to what some commenters described are already lengthy processing times. Some commenters stated that increased complexity and bureaucracy would lead to more costs for the government, petitioners, and taxpayers.

Response: DHS does not agree that the weighted selection process implemented through this rule adds unnecessary complexity or confusion for stakeholders. DHS also does not agree that the weighted selection process would lead to lengthy adjudication or processing times. First, DHS notes that USCIS does not adjudicate the registration. If

commenters were referring to the petition adjudication process, DHS acknowledges there may be some added complexity to the adjudication, for which DHS will need to train officers, and USCIS adjudicators will need additional time to review newly required information during the adjudication of the petition. However, DHS does not anticipate any unnecessary delays and believes that any additional adjudicative burden will be outweighed by the overall benefits of the weighted selection system. With respect to the commenters' concerns about increased costs to the government, this rule does not impact current H-1B filing or registration fees. In general, USCIS reviews the fees for its services on a biennial basis. If the review determines the current fees are inadequate to recover costs, or that they otherwise need to be adjusted, then the fee schedule adjustment would be determined at USCIS' next comprehensive biennial fee review.[92] It is unclear what other costs to the government the commenters contemplated. Regarding the claim that this rule would increase costs to taxpayers, DHS disagrees and finds these comments unclear as to how or why this rule would impact taxpayers in general as USCIS is primarily a fee-funded agency and is not dependent on taxpayer dollars.[93]

With respect to technical errors, USCIS is confident that the new system and process will be operable in time for the FY 2027 registration and cap filing season. In the unlikely event that USCIS discovers that the new weighted selection process is inoperable in time for the FY 2027 season, USCIS would take remedial measures at that time.

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[92] *See* USCIS, USCIS Policy Manual, Volume 1, Part B, Chapter 3 - Fees, https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-3 (last modified Nov. 3, 2025) (explaining that USCIS reviews the fees for its services on a biennial basis, at which time it reviews to determine if current fees are inadequate to recover costs or otherwise need to be adjusted).

[93] *See* USCIS, USCIS Policy Manual, Volume 1, Part B, Chapter 3 - Fees, https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-3 (last modified Nov. 3, 2025) ("Unlike most government agencies, U.S. Citizenship and Immigration Services (USCIS) is not dependent on taxpayer dollars… USCIS receives 96 percent of its funding from filing fees and not from congressional appropriations.").

4. Data and Transparency

Comment: A commenter recommended publishing the exact weighting scheme in advance, including any caps, so employers and schools can plan accordingly. The commenter requested DHS publish "final technical guidance" and "selection outcomes by wage level, degree type, employer size, North American Industry Classification System code, and geography," adding that transparency will let DHS validate that the system is meeting program goals without unintended effects. Another commenter requested clear guidance on how geographic wage differences will be handled. A different commenter suggested publishing annual, anonymized statistics on weighting outcomes by wage level, SOC code, and metro area to allow labor markets to adjust and deter misuse.

Response: DHS believes that the regulations finalized by this rule sufficiently detail the weighted selection process for the H-1B cap. As described in the NPRM and codified at new 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*ii*) and (5)(*ii*), a beneficiary assigned wage level IV will be entered into the selection pool four times, a beneficiary assigned wage level III will be entered into the selection pool three times, a beneficiary assigned wage level II will be entered into the selection pool two times, and a beneficiary assigned wage level I will be entered into the selection pool one time. It is unclear what "caps" the commenter is referring to, as DHS is not implementing caps of any particular wage level or otherwise altering the existing H-1B cap.

Regarding the request to publish data on selection outcomes, DHS notes that it is not legally required to publish such information. However, DHS already makes certain information about H-1B beneficiaries public on an annual basis. Specifically, pursuant to Section 416(c)(2) of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA),[94] DHS submits information on the countries of origin and occupations of, educational levels attained by, and compensation paid to, aliens who were issued H-

[94] Pub. L. 105-277, div. C, tit. IV, 112 Stat. 2681.

1B visas or otherwise provided H-1B nonimmigrant status during the previous fiscal year to the Committees on the Judiciary of the United States House of Representatives and the Senate on an annual basis.[95] DHS plans to closely monitor the impacts of weighting under this rulemaking and will consider what information, if any, it may be appropriate to make publicly available beyond what USCIS already provides through the annual report to Congress and the H-1B Data Hub.[96]

Comment: A commenter said the need for the proposed weighting approach is premature because DHS has not yet published a transparent assessment of FY 2025–FY 2026 outcomes under the beneficiary-centric rule, which was designed to reduce gaming and ensure each beneficiary has the same chance of selection. The commenter further said that DHS must first provide evidence that "material integrity gaps persist" that the beneficiary-centric changes did not solve but that wage weighting would. Another commenter said that the proposed rule does not account for the recently implemented H-1B Modernization Rule and the beneficiary-centric registration system, which have significantly strengthened the integrity of the H-1B program.

Response: DHS disagrees with these commenters. Beneficiary-centric selection and weighted selection serve different, though complementary, policy goals. It is therefore appropriate to have both beneficiary-centric selection and weighted selection. In February 2024, DHS amended its regulations to implement a beneficiary-centric selection process for H-1B registration to ensure each beneficiary would have the same chance of being selected, regardless of the number of registrations submitted on his or her behalf, among other integrity measures. 89 FR 7456 (Feb. 2, 2024). The beneficiary-centric selection process is needed to prevent unscrupulous actors from unfairly increasing the

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[95] *See, e.g.,* USCIS, Characteristics of H-1B Specialty Occupation Workers; Fiscal Year 2024 Annual Report to Congress; October 1, 2023 – September 30, 2024 (Apr. 29, 2025).

[96] USCIS, H-1B Employer Data Hub, https://www.uscis.gov/tools/reports-and-studies/h-1b-employer-data-hub#:~:text=The%20H%2D1B%20Employer%20Data%20Hub%20contains%20data,query%2Dspecific%20data%20in%20Excel%20or%20.csv%20format (last visited Dec. 5, 2025).

odds that a beneficiary will be selected, thus it is important to keep the beneficiary-centric selection process in place. The goal of this rule is to implement a selection process that builds on the beneficiary-centric selection process and favors the allocation of H-1B visas to higher-skilled and higher-paid workers. Even with the weighted selection process, the need to prevent unscrupulous actors from unfairly increasing the odds of selection remains. Therefore, the wage-based selection process finalized in this rule will operate in conjunction with the existing beneficiary-centric selection process and there is no reason to delay this rule. Similarly, the commenters have failed to explain how they believe the integrity measures in the final rule "Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers" impact the weighted selection process. While the integrity measures in that rule have value, they did not implement a weighted selection process to favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. The weighted selection process will build upon improvements made in prior rules, and the commenters provided nothing to suggest otherwise.

5. Comments Related to Presidential Proclamation 10973, Restriction on Entry of Certain Nonimmigrant Workers (September 19, 2025)

Comment: Some commenters who opposed the rule stated that the impact of the proposed rule must be considered in combination with the $100,000 fee. For instance, commenters noted that certain businesses, such as small and mid-sized businesses, startups, nonprofits, and universities, would essentially be priced out of the H-1B program. Other commenters remarked that the combination of the new fee plus the weighted registration would deter skilled international students and workers from choosing to work and study in the United States. A few commenters further argued that the fee would be cost-prohibitive and thus employers in less geographically-desirable locations will have even more difficulty filling open positions. Another commenter noted

that the new fee along with a new weighted lottery system introduces two significant procedural changes which will likely cause investment uncertainty and risk for companies that utilize H-1B visas, which will harm U.S. companies and not help U.S. workers.

Response: DHS disagrees with these commenters. In the H-1B Proclamation, President Trump noted that the H-1B program "has been deliberately exploited to replace, rather than supplement, American workers with lower-paid, lower-skilled labor." 90 FR 46027 (Sept. 19, 2025). The President concluded that it was, therefore, "necessary to impose higher costs on companies seeking to use the H-1B program in order to address the abuse of that program while still permitting companies to hire the best of the best temporary foreign workers." 90 FR 46027 (Sept. 19, 2025). The President, in the H-1B Proclamation, also directed the Secretary of Homeland Security to "initiate a rulemaking to prioritize the admission as nonimmigrants of high-skilled and high-paid aliens." 90 FR 46027 (Sept. 19, 2025). This rule is consistent with the President's policy direction and is an important component of the effort to favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. That is, even where the H-1B Proclamation applies, this rule is needed to help ensure the allocation of H-1B visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels.

Further, DHS notes that the $100,000 payment required by the H-1B Proclamation does not apply to all H-1B petitions. For example, USCIS has clarified that the H-1B Proclamation "does not apply to a petition filed at or after 12:01 a.m. eastern daylight time on September 21, 2025, that is requesting an amendment, change of status, or extension of stay for an alien inside the United States where the alien is granted such

amendment, change, or extension."[97] In addition, exceptions to the $100,000 payment may be granted by the Secretary of Homeland Security to any individual alien, all aliens working for a company, or all aliens working in an industry. Finally, the H-1B Proclamation will expire, absent extension, 12 months from its effective date. This rule, in contrast, will continue indefinitely.

For these reasons, DHS believes that this rule remains necessary to better ensure that initial H-1B visas and status grants would more likely go to the highest-skilled or highest-paid beneficiaries. While DHS recognizes that this could result in increased costs for a business, and that the combined effect of the two policies could further disadvantage businesses that lack the resources to pay the $100,000 fee and higher wages, DHS believes that having a greater chance to recruit or retain talented employees may offset these increased costs. If a company is unable to pay an alien a higher wage for a greater chance of selection, they could alternatively try to find and hire a U.S. worker.

Comment: A few commenters noted the combined impact of the $100,000 fee with the proposed rule. A commenter stated that the $100,000 fee represents a substantial enough surcharge such that it already limits H-1B petitions to beneficiaries who are "very valuable to the company and America." The commenter suggested that DHS should first allow more time to measure the impact of these recent changes on the H-1B program without further complicating it with a weighted selection process. Another commenter said that the new $100,000 fee helps to ensure that only genuine and serious H-1B filings will be submitted and will address issues of registration abuse. This commenter concluded that the new fee renders a weighted lottery "unnecessary and redundant."

Response: DHS disagrees with these commenters. As previously explained, the weighted selection process implemented in this rulemaking complements the stated goals

[97] USCIS, H-1B Specialty Occupations, https://www.uscis.gov/working-in-the-united-states/h-1b-specialty-occupations (last modified Oct. 20, 2025).

of the H-1B Proclamation, in that it seeks to "prioritize the admission as nonimmigrants of high-skilled and high-paid aliens." 90 FR 46027 (Sept. 19, 2025). Further, the H-1B Proclamation applies to a subset of petitions, whereas this rule applies to all cap-subject petitions, and the H-1B Proclamation has an expiration date, whereas this rule does not. DHS therefore believes that this rule remains necessary, and that there is no need to allow more time for the implementation of this final rule.

G. Statutory and Regulatory Requirements

1. Administrative Procedure Act (APA)

a. Request for 30-Day Extension

Comment: Some commenters requested that USCIS extend the comment period by 30 days, stating that given the complexity and impact of the proposed changes the current 30-day window is insufficient for meaningful public input on a rule of this scope. For example, one such commenter cited the rule's economic significance, technical detail, and broad impact across sectors, and said that a longer period would support informed public participation, strengthen the administrative record, and align with established practices under the APA and Executive Order 12866.

Commenters stated that E.O.s 12866 and 13563 recommend a minimum 60-day comment period for economically significant regulatory actions and wrote that DHS's delay in publishing the rule undermines the urgency argument. The commenters also said that the government shutdown on October 1, 2025, disrupted normal operations since it resulted in the cessation of operations of National Archives and Records Administration (NARA), which controls the Federal Register. The commenters said that although public comments can still be submitted during the shutdown, NARA noted on the Federal Register page that it will not provide any technical assistance. The commenter did not explain what technical assistance they may have required in this regard.

The commenters expressed concern over the lack of prior notice about the rule and cited past DHS statements and court decisions that questioned the legality of prioritizing H-1B petitions based on wages. Several commenters requested more time to conduct economic and legal analysis, collect data, and to propose viable alternatives, asserting that DHS should provide a full 60-day period to allow employers time to analyze the rule, prepare feedback, and adjust operations to reduce unintended negative impacts.

Response: While DHS acknowledges that E.O.s 12866 and 13563 indicate that agencies generally should provide 60 days for public comment, DHS believes that the 30-day comment period was sufficient in this case given: (1) the narrow scope of the rulemaking (i.e., addressing the selection process, which is a discrete aspect of the H-1B program), and (2) the history of rulemaking on this topic. In addition, DHS has a compelling policy interest, as well as a rulemaking directive from the President to propose a rule that prioritizes the admission of high skilled and high paid aliens. 90 FR 46027 (Sept. 19, 2025). Therefore, DHS did not extend the comment period. Given the narrow scope of this rulemaking, and the fact that DHS had previously proposed a similar, though not identical, concept of wage-based selection, DHS believes that 30 days was sufficient time for the public to determine the impacts of the proposed rule and to prepare and submit comments. The sufficiency of the 30-day comment period is demonstrated by the number of high-quality comments received from the public, including individuals, attorneys, employers, and organizations.

Comment: Some commenters discussed perceived shortcomings of the NPRM and urged DHS to reconsider the proposal and, as necessary, to publish a supplemental NPRM addressing these shortcomings and requesting public comment. Some commenters discussed such perceived shortcomings and requested that DHS at a minimum delay implementation of the rule until the following (FY 2028) cap season.

Among other issues, commenters stated that the proposal to tie selection to wage levels could deter employers from filling hard-to-fill roles or result in employers pushing work offshore, and that DHS failed to consider variable compensation factors, provide exemptions for roles tied to critical infrastructure, or clarify ambiguities regarding situations involving relocations, multiple office locations, SOC code classification flexibility, and lottery allocation uncertainty. Commenters wrote that these issues must be addressed to ensure fairness, predictability, and transparency in the H-1B process.

Other commenters advised DHS to take into consideration other factors to prioritize selection, such as age, tenure, performance, and long-term contribution potential and issue an updated proposal or not implement changes until the FY 2028 cap season, particularly "[g]iven that many international workers cannot even access their official wage level data during this public comment period, proceeding now would be premature."

Response: DHS declines to delay the implementation of this final rule until the FY 2028 cap season. DHS has addressed proposed alternatives to the wage selection methodology elsewhere in this rule but believes that the weighted methodology strikes a balance between addressing policy goals of selecting higher-paid and higher-skilled beneficiaries in a fair manner and creating a methodology that is administrable in the context of the H-1B registration process, as well as the H-1B petition process, in the event the registration process is ever suspended.

With respect to commenters who said they could not access wage-level data during the comment period, it is unclear what they were referencing. However, DHS does not believe that a temporary inability to access wage-level data prevents the commenters from understanding the weighted selection methodology included in this rule. DHS also notes that wage-level data changes from year to year based on adjustments to the OEWS. As discussed elsewhere in this rule, DHS believes that it has compelling reasons to move

expeditiously to implement the wage-level-based selection for the upcoming FY 2027 cap season.

2. Regulatory Impact Analysis and Benefits (E.O.s 12866 and 13563)

Comment: A commenter stated that the Regulatory Impact Analysis (RIA) failed to fully address the impacts of the proposed selection process on the broader economy. The commenter cited DHS analysis that showed that 76 percent of H-1B petitioners are small business owners, and that the proposed regulation would impose significant financial burdens on a substantial number of small entities, with many facing cost increases greater than 1–5 percent of their revenue. However, the commenter claimed that DHS failed to address the fact that small businesses are the primary drivers of job creation and innovation in the United States. The commenter further claimed that imposing heavy costs or pricing small businesses out of the global talent market undermines national interests by impeding their ability to hire and innovate. The commenter concluded that, ultimately, these burdens could lead to higher costs or reduced services for American communities.

An industry group commented that using LCA wage data as a proxy for registration wage data leaves considerable ambiguity on the projected impact of the rule, because the LCA is not currently required to be submitted at registration. The commenter encouraged USCIS to conduct a comprehensive impact assessment that quantifies potential effects on critical industries.

One commenter said that DHS has not "adequately quantified and considered the distortions of this proposal, including potential disparate impacts on the economies of different geographic areas." A commenter highlighted the need for DHS to estimate the number of affected small entities, detail compliance burdens, consider significant alternatives, and therefore reopen comments to allow meaningful input from small businesses.

A commenter said that DHS failed to adequately address the negative impacts on particular employers, such as those in critical infrastructure sectors. The commenter further stated that DHS acknowledged a significant reduction in H-1B selections for civil engineers and architects yet failed to provide a comprehensive economic assessment of the resulting labor shortages.

Response: DHS acknowledges the importance of small businesses to the U.S. economy and that the rule may have a significant economic impact on a substantial number of small entities. DHS notes that these impacts primarily reflect distributional outcomes inherent in administering a fixed statutory cap, rather than new compliance costs created by the rule. Establishing different standards or preferential treatment for small businesses would be inconsistent with the policy objective of facilitating the admission of higher-skilled alien workers for employers and would undermine fairness and program integrity. Prioritizing registrations by higher wage level equivalencies aligns with the policy objective to allocate limited H-1B visas to positions that reflect higher skill and pay and supports innovation and competitiveness by increasing the chance of selection for higher-paid, higher-skilled beneficiaries.

DHS recognizes that an LCA is not required at registration and, therefore, DHS does not have data on the number of registrations by wage level. For analytical purposes, DHS assumes that the distribution of wage levels observed in cap-subject petitions (from LCA data) reasonably approximates the distribution of wage levels in registrations. To the extent proffered wages exceed the wage levels indicated on the LCA, the projections presented here should be viewed as an upper bound of the rule's impact. Because DHS cannot estimate how many registrants would select a higher wage level than required on the LCA, DHS uses LCA wage data as a reasonable proxy for registration wage data. DHS did not receive any alternative data sources from commenters that would allow for a

more reasonable proxy for registration data or that could appropriately substitute for the petition data used in the analysis.

LCA wage data are based on the Bureau of Labor Statistics' OEWS wage survey which is derived from employer compensation data and produces estimates by occupation and geographic area, reflecting national patterns and regional labor-market conditions. The LCA wage levels are adjusted to correspond to progressively higher degrees of skill, experience, and responsibility within an occupation, and using them in the selection process helps normalize comparisons across local labor markets.

DHS declines to establish carve-outs for particular employers or occupations, and such carve-outs would be impractical within the H-1B framework. Accordingly, DHS applied a consistent allocation method while ensuring that all employers—including small entities and those in essential occupations—retain meaningful opportunities for selection under the same criteria.

In the Initial Regulatory Flexibility Analysis (IRFA) accompanying the NPRM, DHS carefully addressed the number of affected small entities and the estimation methods, the principal North American Industry Classification System (NAICS) sectors among filers, wage-level distributions by entity size, the direct economic impacts and counts of impacted entities, projected reporting, recordkeeping, and other compliance requirements, and the significant alternatives considered. Accordingly, DHS has determined that reopening the comment period is not warranted to obtain additional meaningful input from small entities.

DHS declines to include an economic assessment on separate occupation-specific labor shortages. The new weighted selection process is not designed to project occupational demand, nor does DHS seek to set occupation-specific priorities, guarantees, or reserved allocations. The H-1B program is a general specialty occupation visa category, not a targeted labor shortage program. The weighted selection process

applies uniformly and neutrally across all SOC codes and industries. DHS's goal is to fairly and efficiently administer the H-1B cap selection process whenever registrations (or petitions, as applicable) exceed the annual numerical limitations. It is not DHS's goal to ensure a certain number of workers in specific sectors are selected each year.

DHS appreciates the commenter's concerns regarding the potential broader economic impacts of the proposed selection process, particularly on small businesses and their role in job creation and innovation. However, the RFA does not require agencies to assess indirect or secondary effects, such as broader economic impacts or downstream consequences on the economy as a whole. The IRFA and Final Regulatory Flexibility Analysis (FRFA) prepared for this rule focus on the direct economic impacts on small entities that are subject to the proposed selection process. While DHS recognizes the importance of small businesses to the U.S. economy and innovation, the broader economic considerations raised by the commenter are not part of the RFA's requirements.

3. Methodology and Adequacy of the Cost-Benefit Analysis

Some commenters stated that the cost-benefit analysis conducted by DHS is flawed. Specific issues that were raised are addressed below.

a. Quantifying the Impacts

Comment: A commenter stated that given the availability of multi-year DHS data on registrations, selections, and petition approvals, the cost-benefit analysis should have simulated how the proposed weighted selection process would affect selections by wage level, employer size, occupation, and geography, as well as to estimate expected changes in labor market outcomes. Without such quantitative analysis, the regulatory impact analysis is incomplete.

Response: DHS disagrees with this comment. The RIA quantified expected impacts by wage level using DOL LCA data, which is the best available dataset aligned

with the rule's use of LCA wage levels. Because the LCA process generally relies on OEWS prevailing wages that are specific to occupation and geographic area, the wage-level analysis inherently reflects occupational and regional labor market differences. The IRFA accompanying the NPRM also addressed employer size, including the number of affected small entities, the principal NAICS sectors among petitioners, and wage-level distributions by entity size. Accordingly, the RIA provided rigorous quantification where data permitted and qualitative assessment where measurement constraints exist.

Comment: A commenter stated that the NPRM did not adequately model or quantify the broader economic costs of reducing access to high-skilled foreign talent. The commenter argued that wage level is not the same as skill, and the NPRM does not convincingly show that the new process will actually raise skill or pay levels.

Response: DHS disagrees with these comments. The rule does not alter the eligibility criteria, numerical cap limits, or availability of H-1B visas, nor does it affect the availability of foreign students' enrollment and post completion OPT. Accordingly, DHS does not expect direct effects on the foreign talent pipeline. DHS believes that wages reflect market valuation of skills and productivity. OEWS wage levels, derived from employer compensation data, provide occupation- and geography-specific estimates that capture national and regional conditions and the higher wage levels are a reasonable proxy for progressively higher skill.

DHS also disagrees with the comment that the NPRM does not convincingly show that the new process will actually raise skill or pay levels As shown in Table 12 of the NPRM, over a five-year period, the wage-level distribution of cap-subject petition receipts was approximately 28 percent (level I), 55 percent (level II), 12% (level III), and 5% (level IV). Because receipts are concentrated in levels I and II, a purely random selection would mirror that distribution. The rule's shift from random to weighted selection is intended to encourage employers to offer higher wages to higher-skilled

H-1B workers to increase their chance of selection and to reduce incentives to use the program for relatively lower-paid, lower-skilled workers. As discussed in the RIA, moving to a weighted selection process is expected to increase the number and share of selected registrations with wages that correspond to a level IV, resulting in higher average offered wages among selected H-1B cap-subject workers.

b. Calculation Error

Comment: A commenter identified what he or she characterized as a calculation error in DHS's analysis that led the agency to understate the negative impact on workers at level I and overstate the benefits for those at levels III and IV. After correcting the error, the commenter found that individuals at level I would receive 11,518 fewer H-1B selections, more than DHS's estimate, while those at level IV would receive 4,426 more selections, and level III and II would also see increased selections. Another commenter raised the same issue, stating that there were calculation errors in the NPRM's tables (specifically Table 13), where the method for estimating the number of petitions by wage level is unclear or incorrect. The commenter claimed that this issue affected subsequent estimates of how the rule would change the distribution of petitions by wage level.

Response: DHS clarifies that the final line in Table 13 is not an error; it is the simulation result rather than the product of the number of petitions and the suggested weighted probability. In this final rule, further explanation is added in the notes to Table 13, explaining why DHS presented simulation results rather than using a weighted probability. Since unique beneficiaries can be selected only once, the selection process is conducted without replacement. However, multiplying the number of petitions by the selection probability assumes a with-replacement lottery (e.g., for a wage level IV registrant, four entries are placed into the lottery. If one of the beneficiary's registrations is selected, the remaining three registrations for that beneficiary would still have an equal chance of selection. However, under the USCIS selection process, the remaining three

registrations would be removed once the first registration was selected). In practice, selections are made without replacement, so this calculation overstates the number of selected beneficiaries and the estimated impact under the proposed rule. Also, calculating the weighted probability without replacement is intractable to compute explicitly, so DHS used a Monte Carlo simulation method to estimate line F in Table 13.

Comment: A commenter said the NPRM relies on petitions (winners) rather than registrations (all submissions) and fails to align its analysis with the "unique beneficiary" selection process. The commenter wrote that DHS's calculations in the NPRM were based on FY 2020–FY 2024 lotteries among registrations instead of unique beneficiaries, even though USCIS shifted to beneficiary-centric selection for the FY 2025 cap season. The commenter also wrote that the NPRM incorrectly stated that implementation occurred in FY 2024, which creates confusion, and the analysis should be conducted under the current unique beneficiary process. Moreover, the commenter stated that DHS presumably has the information necessary to merge registrations with LCA data, but the NPRM did not merge registrations with LCAs to obtain wage levels for all submissions, and relying only on petition winners may bias estimates and overstate shifts to higher wage levels under weighting.

Response: To clarify the timeline, the beneficiary-centric process applied to the FY 2025 cap season, and the operational work for that season occurred during FY 2024. Stating that the beneficiary-centric process was implemented in FY 2024 refers to when USCIS operationalized the change, not the cap year label. The timing does not affect the analytical framework, and an explanatory note was included in Table 3 in the NPRM.

Contrary to the commenter's assumption, DHS does not have the information necessary to merge registrations with LCA data. LCAs are not required for registrations. Registrations currently do not include verified wage level information. Wage levels are verified at the petition stage via the associated LCA. Also, not every registration can be

cleanly merged with an LCA by employer and position, and a substantial share of registrations never mature into petitions. For those reasons, wage distributions derived by merging registrations and LCAs by employer and position would be noisy and potentially misleading. DHS acknowledges the limitation of using petition data to estimate the impact at the registration stage; however, using petition data ensures wage levels are validated and provides a reliable basis for analysis.

The beneficiary-centric change reduced the issue of duplicate registrations for the same individual and substantially reduced any potential divergence between petition distributions and registration-level wage mixes for multi-registration beneficiaries. This effort has anchored the registration process to real registration entries rather than speculative ones. For the remaining small number of multi-registration beneficiaries, assigning the lowest wage level across multiple registrations as proposed and finalized in this rule prevents gaming and creates a consistent beneficiary-level input for weighting. Because the lowest wage level will govern selection probability at the registration stage under the new rule when multiple registrations are submitted for the same beneficiary or the beneficiary will work in multiple locations, unique beneficiaries have less incentive to choose to have multiple registrations submitted on their behalf at different wage levels. Therefore, DHS's use of petition data to estimate the wage-level distribution of the registration population is expected to reasonably reflect the wage-level distribution that will occur under the new rule.

Comment: A commenter stated that DHS calculations combined both the regular cap (65,000 visas) and the advanced degree exception pool (20,000 visas). However, the distribution of beneficiaries across wage levels is different for these two groups. Specifically, a much higher proportion of advanced degree beneficiaries are at wage level I (36 percent) compared to other beneficiaries (20 percent). Because advanced degree holders get two chances in the lottery (first in the advanced degree pool, then in the

regular pool if not selected), they are more likely to be chosen. Without accounting for this, DHS calculations overstated how much the new weighted selection process would reduce the share of low-wage (level I) petitions.

Response: Since the wage level distribution of advanced degree registrants is slightly different from that of regular cap registrants and advanced degree registrants have slightly higher concentration in wage level I compared to regular cap registrants, DHS recognizes combining the pool of beneficiaries for the regular cap and the advanced degree exemption would result in a decrease in wage level I beneficiaries under the rule. However, modeling the proposed weighted selection as a single pooled draw across all registrations is more tractable and clarifies the rule's impact with minor loss of accuracy.

Despite the difference, the wage level distribution of advanced degree registrants and regular cap registrants is similar between groups: concentrations at wage level I and II are heavy, while wage level III and IV are lighter. The difference between the two-step and pooled model is small because only 20,000 out of 85,000 cap slots go towards the advanced degree exemption, and the wage-level mix of advanced degree filings is broadly similar to that of the total pool. *See* Table 12 of the NPRM and the analysis in this final rule. As a result, DHS expects the two-step selection process model would affect the overall wage-level share by only a small amount, while the weighting itself changes selection rates by much larger margins. The analysis provided aims to help readers better understand how the rule may modify the selection process, while recognizing that it cannot precisely capture all potential impacts.

Comment: A commenter questioned the accuracy of Figures 2 and 3 in the NPRM, noting they show civil engineers, statisticians, and architects (except landscape and naval) with no or virtually no petitions above wage level I, and "Computer Occupations, All Other" with no petitions at wage level I, despite other data indicating otherwise. The commenter noted that USCIS data on H-1B petitions obtained by

Bloomberg merged with the DOL LCA data indicate that in FYs 2021–2024, over 5 percent of petitions with the SOC title "Computer Occupations, All Other" were at wage level I. The commenter stated that this is inconsistent with the claim in the notice that there were no petitions in that occupation at wage level I during fiscal years 2020–2024. The commenter also objected to the NPRM's claim that "Electronics Engineers, Except Computer," "Materials Engineers," and "Engineers, All Other" would have no petitions at wage level I under the proposed weighting, citing evidence that these occupations have had non-trivial wage level I shares under the current process. The commenter added that the USCIS data on H-1B petitions obtained by Bloomberg merged with the DOL LCA data indicate that in fiscal years 2021–2024 almost 20 percent of petitions with the SOC title "Electronics Engineers, Except Computer" were at wage level I, over 12 percent of petitions with the SOC title "Materials Engineers" were at wage level I, and almost 45 percent of petitions with the SOC title "Engineers, All Other" were at wage level I. The commenter stated that it is unclear why DHS asserted in the NPRM that these occupations "are not expected to contain any wage level I registrations" under the proposed rule.

Response: Figures 2 and 3 show only the top five SOC 6-digit occupations within SOC major group 15 (Computer and Mathematical Occupations) and SOC major group 17 (Architecture and Engineering Occupations). DHS presented only the top five because they cover more than 70 percent of the distribution and are intended to illustrate that DHS projected distributional changes in occupations due to the rule. Both figures have titles that indicate these are the top five SOC 6-digit codes. The figures illustrate the distributional impacts across SOC codes and should not be interpreted as indicating that no petitions exist for occupations or wage levels not shown. Figure 2 shows, for each wage level, the top five six-digit SOC codes within the Computer and Mathematical Occupations category. SOC 15-1299 does not appear in the top five at wage level I, but it

does at wage levels II, III, or IV. The NPRM misstated that there were no petitions at certain wage levels within specific SOC codes. Such petitions did exist but for those wage levels, the relevant SOC codes did not have enough petitions to appear among the top five SOC codes presented in the figures. This has been clarified in the final rule. It did not affect the underlying analysis or conclusions.

c. Distributional Effects and Transfers

Comment: A commenter stated that the distributional effects and transfers associated with the proposed process were not appropriately analyzed. The commenter wrote that the proposed weighting favors higher-wage firms and certain regions or occupations with high prevailing wages, while disadvantaging small, resource-constrained employers and lower-wage areas. Additionally, if weighting results in higher offered wages, it constitutes a transfer from employers to workers, which the commenter said should be described and, where possible, quantified across different firm sizes and geographic locations. Another commenter further claimed that DHS failed to monetize the economic impact of employers offshoring jobs due to reduced access to entry-level H-1B workers, as well as the loss of revenue from declining foreign student enrollment at U.S. institutions. The commenter wrote that these transfer costs, money and economic activity moving abroad should have been quantified and balanced against any supposed benefits of the rule. The commenters concluded that because DHS omitted this analysis, its cost-benefit assessment is incomplete and procedurally flawed, undermining the justification for the proposed rule.

Response: DHS disagrees that distributional effects and transfers were not appropriately analyzed. The regulatory impact analysis quantifies transfers and evaluates distributional effects across SOC codes, and the IRFA presents impacts by firm size. With respect to geography, wage weighting uses prevailing wages by occupation and area

of intended employment, which normalizes for local labor markets and mitigates any systematic advantage for higher-cost regions.

DHS disagrees that the economic impact of employers potentially offshoring jobs and the loss of revenue from potentially declining foreign student enrollment at U.S. institutions are transfers that an economic analysis for this rule is able to isolate and monetize. Decisions to offshore work or changes in foreign student enrollment are influenced by numerous factors beyond this rule. DHS is unable to isolate the factors contributing to any potential future decline in foreign student enrollment from the impacts of this rule. The commenter did not provide data to support the assertion that this rule would result in a decline in foreign student enrollment.

DHS is currently unable to effectively model the economic impact of employers potentially offshoring jobs, as there is no reliable publicly available data on how many specific jobs are currently offshored due to unsuccessful H-1B petitions or how that number might change as a result of this rule. Additionally, the commenter did not provide any data or a methodology to quantify the economic impact of one company offshoring a job due to not receiving an H-1B petition in the lottery versus another company retaining a position in the U.S. after successfully obtaining a petition. While DHS acknowledges that this may be a business decision some companies are already making, DHS is unable to determine how the changes in the weighted selection process under this rule might influence these decisions in the future.

d. Assessment of Alternatives

Comment: Some commenters stated that the cost-benefit analysis did not compare the proposed weighted selection process to reasonable alternatives, such as maintaining a purely random selection, adjusting weighting by region or occupation, or reserving selections for small entities. Commenters stated that DHS could have analyzed, for instance, a beneficiary-centric random selection with enhanced anti-fraud measures,

partial weighting (e.g., with limited multipliers) versus steep weighting (increasing weighting for higher wage levels), geographic or occupation-adjusted weighting to avoid penalizing low-cost areas, and safeguards for small entities, such as floors or set-asides.

Response: In the NPRM DHS considered reasonable alternatives but determined that they do not sufficiently meet the rule's policy objective of facilitating the admission of higher skilled, higher paid beneficiaries, or would undermine program integrity and administrability. DHS also carefully reviewed and considered a number of alternatives suggested by commenters and addressed them in detail in the Alternatives Considered section of the economic analysis portion of this preamble. Regarding the alternatives proposed by the commenter, DHS provides the following responses. Retaining a purely random selection process (with or without anti-fraud measures) does not advance the policy objective and leaves incentives for mass registration at lower wage levels. Anti-fraud tools are complementary and not substitutes for an allocation mechanism. Partial vs steep weighting does not meet the objectives of the rule because partial weighting produces only modest adjustments that leave selection outcomes largely unchanged from the current selection process, and steep weighting would function more akin to a carve-out for wage levels III and IV wages while crowding out wage levels I and II even more aggressively.[98] Geographic or occupation adjusted weighting is moot because the weighted selection process already normalizes by local labor market via prevailing wage levels for the occupation and area of intended employment. Adding explicit regional or occupation carve-outs would be complex, subjective, and more susceptible to gaming. Any alternative process that provides a different, preferential weighting scheme especially for small entities would undermine the overall utility of this rule, which is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens.

[98] The commenter referenced "partial weighting" whereby minimally acceptable weights might apply to only a portion of locations or occupations to correct for differences within specific subgroups, whereas "steep weighting" refers to assigning relatively larger weights to correct for overall differences.

e. Costs to Employers

Comment: A commenter stated that the analysis failed to fully account for the significant costs to employers. According to the commenter, while DHS acknowledged that the new weighted selection process would sharply reduce the chances of selecting registrations or petitions for entry-level positions, it did not adequately analyze the broader economic consequences for employers. Specifically, the agency overlooked the increased liability risks associated with artificially raising wage rates for H-1B workers, which could expose employers to claims of wage discrimination under Federal law if domestic workers are not similarly compensated. To avoid such litigation, employers may be forced to raise wages for all entry-level employees, resulting in substantial, unaddressed costs, especially for small businesses operating on fixed contracts and narrow margins. The commenter wrote that DHS's analysis only considered transfer costs to H-1B workers and failed to provide a comprehensive cost analysis of these broader impacts, despite acknowledging its ability to do so. This omission is a fundamental flaw, as many small employers may be unable to absorb these costs, jeopardizing their ability to hire skilled workers and fulfill existing contracts.

Response: DHS assesses the primary economic effect as distributional transfers among petitioners due to a reallocation of selections from wage level I to higher wage levels within a fixed cap. This leads to an unquantified cost in terms of lost producer surplus for employers who registered at wage level I and were not selected, and a corresponding benefit in producer surplus for employers at higher wage levels whose registrations have higher selection probabilities. The rule does not require employers to artificially raise wages nor does it encourage wage discrimination. Businesses are unlikely to offer higher wages if the employee's skills do not justify the cost. DHS expects that companies will continue to make business decisions that align with their operational and financial interests.

The weighted selection process does not mandate any specific wage level; employers remain legally obligated to pay H-1B workers at least the prevailing wage or the actual wage, whichever is higher. *See* INA sec. 212(n)(1), 8 U.S.C. 1182(n)(1). Differentiated wages are already required under existing law, if necessary to comply with the prevailing wage obligation, and this rule does not change those existing obligations or create additional wage liabilities.

f. Other Comments

Comment: A commenter stated that the economic analysis underpinning the proposed rule overly relies on outdated studies and does not account with sufficient care for USCIS' own recent statistics. The commenter pointed to Figure 1 in the proposed rule and said that it clearly shows the vast majority of H-1B petitions for positions within the most relevant SOC codes are filed at wage level I and II, with the overwhelming majority of computer and mathematical occupations filed at level II. The commenter added that presenting the wage level selection effect proposed by DHS by looking only at the two-digit SOC code, which breaks occupations down only into broad "major groups," is itself misleading because wage levels are provided for H-1B by the DOL based on six-digit SOC codes, which breaks the classification down much further into detailed, specific jobs. The commenter concluded that the wage level construct does not allow for effective comparison or ordering among specific, detailed occupations.

Response: DHS disagrees with the comment. The RIA uses the most current H-1B registration and petition data available and presents wage-distribution information at both the two-digit SOC "major group" level and the six-digit detailed SOC level. Figure 1 in the RIA provides a program-wide overview of wage distributions across major occupational groups to orient readers to broad patterns, while Figures 2 and 3 supply the more granular six-digit SOC analysis that the commenter claims is missing.

Comment: A commenter asserted that the weighted selection process does not sufficiently reduce the number of level I workers selected. The commenter showed self-selected examples of wage level distribution of which level I registrations still have a big share and concluded DHS's new system is flawed. The commenter proposed much more aggressive weighing (up to sixteen times for level IV) to shift selections toward level III and IV. The commenter also recommended visa reservations for specific occupations, restrictions on remote H-1B work, removal of the master's cap exemption, and prioritization based on university rankings.

Response: DHS disagrees with the comment that the rule is "flawed" based on the commenter's illustrative tables. The commenter picked an example where level I registrations are extremely dominant so even with weighting, the percentage of selected level I registrations is extremely high such that the commenter concludes that DHS's system is flawed since it could not redistribute the selected outcome using the proposed weighting. The weighted selection process does not guarantee that level I registrations will be eliminated or reduced to some specific target number but rather increases relative selection probabilities by corresponding wage level. If level I registrations massively outnumber registrations at higher wage levels, level I registrations would still get a substantial selected share. DHS declines to use much more aggressive weighting. DHS believes that the extremely steep weighting ratios would create disproportionate selection distribution, including the exclusion of workers at levels I and II. DHS does not intend to exclude level I and II workers from participation in H-1B program. Also, DHS must ensure that the weighted selection process remains administrable, predictable, and transparent. Extreme weighting would greatly exacerbate year-to-year variation in selection outcomes, which create instability and uncertainty for employers. The commenter mentioned occupation specific visa reservations, limitations on remote work, and elimination of the congressionally mandated master's cap exemption, but these fall

outside of the scope of the rule. DHS also declines to adopt the commenter's recommendation to prioritize registrations based on university's ranking because specialty occupation is not based on the prestige or ranking of the academic institution.

Comment: A commenter, citing several studies, wrote that the proposed rule ignores evidence showing that H-1B workers earn more than their U.S. counterparts. Meanwhile, the commenter claimed that the studies cited in the proposed rule fail to adjust for observable characteristics, such as age and experience when comparing U.S. and foreign workers and do not provide support for the wage-level weighting framework. The commenter reasoned that because the proposed rule aims to increase average salaries of H-1B workers and given that the average H-1B worker already makes more than similar U.S. workers, it is significant that the rule fails to show the need to prioritize senior workers. Like other comments, the commenter also stated that wage level may not reflect skill and does not allow for cross-occupational comparisons. Finally, the commenter reasoned that a selection process based only on wage levels may shift wage distribution leftward as upper wage level, low wage occupations dominate the selection process.

Response: DHS acknowledges that it is important to control for observable characteristics when comparing wages of H-1B workers and U.S. workers. However, DHS relies on OEWS wage levels reported in LCA filings for H-1B positions, which show that most petitions are submitted at wage levels I and II. Because OEWS wage levels are structured so that wage level III represents the median wage for an occupation and geographic area, the concentration of fillings at level I and II indicate that H-1B positions are generally offered below the local median wage. The rule is intended to increase the likelihood that petitions offering wages at level III and IV will be filed. As shown in Table 12, the wage-level distribution of cap-subject petition receipts is approximately 28% (level I), 55% (level II), 12% (level III), and 5% (level IV). Because

receipts are concentrated in lower levels I and II, a purely random selection would mirror that distribution. The rule's shift from random to weighted selection is intended to encourage petitioners to offer wages that reflect higher-skilled specialty occupation positions, and to reduce incentives to rely on the program for relatively lower-paid, lower-skilled positions to displace U.S. workers. As discussed in the RIA, moving to a weighted selection process is expected to increase the number and share of level IV wage selections, resulting in higher average offered wages among selected H-1B cap-subject workers.

4. Costs

a. Impacts on the economy, employers/registrants/petitioners, legal services providers/HR specialists

Comment: A commenter indicated that the NPRM's estimate of $1.6 billion in "gains" from higher H-1B wages is "illusory," as this number ignores the costs to U.S. workers who have lost jobs or promotion opportunities to H-1B workers, including "family costs and billions in suppressed labor that stifles necessary upskilling."

Response: DHS disagrees that the NPRM's estimated $1.6 billion in wage gains is illusory. The estimate reflects the material change in wages that arises when H-1B cap-subject visas are more likely to be allocated to higher-paid, higher-skilled H-1B workers under the weighted selection process. DHS quantified the change in the number of affected cap-subject workers relative to the baseline and the average wage differential between higher-wage and lower-wage offers and multiplied these values to produce the economic impact. This is the direct impact of the change in the H-1B cap selection process. The commenter's references to family costs are outside the scope of the wage gain estimate, although DHS agrees that the rule may not have captured all the effects of the H-1B program at large on U.S. workers and their families.

Comment: One commenter noted that the rule would increase administrative burdens, likely in excess of the $15 million annually that USCIS estimated at the registration stage. Another commenter said that requiring detailed documentation of wage levels and SOC codes across multiple worksites would impose new administrative burdens on employers, particularly smaller employers.

Response: The commenter provides no empirical support for the assertion that annual burden will exceed DHS's estimate. As shown in Table 10, the change will add additional requirements for registrants, and it will increase the time burden by an estimated 20 minutes. DHS estimates the additional annual cost for registrants (employers), whether completed by an HR specialist, in-house lawyer, or outsourced lawyer, to be approximately $15 million. The change will add questions to the petition form, increasing the estimated time burden by 15 minutes. DHS estimates the additional annual cost to petitioners (employers) at approximately $15 million (see Table 18). The total estimated annual cost to employers will be about $30 million.

Comment: Some commenters stated that the DHS analysis did not adequately assess the impact of international students and workers' contribution to the STEM workforce and the resulting impact on the U.S. economy. A commenter cited economic research that demonstrates high-skilled immigration, especially those with STEM training, causes large increases in productivity and economic growth in the United States. Specifically, the commenter wrote, the increase in U.S. city-level productivity caused by inflows of foreign STEM workers from 1990 to 2010 is sufficient in magnitude to explain between 30 and 50 percent of all aggregate productivity growth in the United States during that period. Moreover, the influx of highly skilled immigrant graduates to the United States during the 1990s caused a 12 to 21 percent rise in the annual number of high-technology innovations reflected by annual patent applications, which in turn raised U.S. GDP per capita by between 1.4 and 2.4 percent—the equivalent, in today's dollars,

of adding $267–458 billion to the U.S. economy each year. And "a substantial reduction in the supply of foreign talent to the U.S. workforce will have large, negative, and lasting effects on productivity and economic growth in the United States."

The commenter further estimated that if the number of foreign STEM graduates from U.S. universities drops by 10 percent, due to policies that deter foreign students from enrolling or staying, this would reduce the total supply of high-skilled STEM workers in the United States by 1.9 percent. In turn, this reduction in high-skilled foreign STEM workers would decrease annual Total Factor Productivity growth by 0.024 to 0.048 percentage points. Over a decade, this would make U.S. GDP 0.24 to 0.48 percent smaller than it otherwise would have been. In today's terms, that would equal a loss of $72–$145 billion—comparable to the entire economy of a small U.S. state, such as Delaware or New Hampshire. The loss of international STEM talent would not just affect tech hubs like Silicon Valley and Boston, but also innovation clusters across the country—including the South, Midwest, and smaller cities that rely on international graduates to compete globally. These regions could see weakened innovation ecosystems and reduced competitiveness.

Another commenter stated international students are critical to the U.S. STEM workforce, making up about 20 percent of all STEM graduates and 44 percent of advanced STEM degree recipients. They contribute disproportionately to U.S. innovation, filing more patents and starting more businesses than U.S. natives or other immigrants. Similarly, although H-1B nonimmigrants are a small share of the total U.S. workforce, they make up a significant portion of highly educated workers in technology-intensive industries. The commenter cited academic research showing that H-1B workers earn more than similar U.S. workers, fill critical skill shortages, boost productivity, and drive innovation, helping the United States maintain a competitive edge in science and technology. According to the commenter, the proposed process could make it harder for

international students to transition from F-1 to H-1B status, narrowing the early-career talent pipeline. This would reduce the economic benefits of the H-1B program and threaten U.S. competitiveness in key sectors. The potential costs of this reduction could far outweigh any wage gains from the new system. Finally, a commenter estimated that the present value of the lost contributions from even a single talented worker over a 30–40-year career would easily reach millions of dollars in economic value. Multiplied across 10,000 workers annually, the long-term cost to the American economy would reach hundreds of billions of dollars.

Response: DHS appreciates the commenters' detailed discussion of the economic literature on the contributions of international students and highly skilled foreign workers to U.S. innovation, productivity, and long-run economic growth. DHS recognizes that highly skilled foreign STEM graduates and H-1B workers play an important role in the U.S. economy and that high-skilled migration has been associated with increased patenting, productivity growth, and expansions in technology-intensive sectors. DHS also acknowledges that international students constitute a substantial share of advanced STEM degree recipients and contribute to U.S. research and development capacity.

However, DHS disagrees that the H-1B weighted selection process would diminish these contributions or that the rule requires a separate productivity- or innovation-specific economic impact analysis. The commenters' discussion largely describes the macroeconomic benefits of high-skilled immigration in general, not the direct effects of any particular H-1B selection mechanism. The new weighted selection process does not reduce the overall number of H-1B cap-subject workers, but it changes the likely distribution of selection across wage levels. The rule does not restrict participation by employers in STEM fields, innovation hubs, or critical technology sectors. Accordingly, the assertions that the rule would reduce the overall foreign talent are speculative and lack empirical support.

b. Impacts on U.S. Workers

Comment: A commenter stated that contrary to DHS claims that H-1B workers displace U.S. workers, research by the National Foundation for American Policy demonstrates that H-1B professionals complement U.S. workers. The commenter wrote that the presence of H-1B workers is associated with lower unemployment rates among college graduates, faster earnings growth for U.S. workers in fields with more H-1B nonimmigrants, and better career alignment for U.S.-born graduates. The commenter argued that data show that increasing the share of H-1B workers in an occupation reduces unemployment and boosts wage growth for U.S. workers, with no evidence of displacement, even among recent graduates. Thus, restricting H-1B visas could inadvertently harm U.S. workers by reducing opportunities for collaboration, innovation, and overall job growth. Another commenter cited research indicating that H-1B workers are generally complements, not substitutes, for U.S. workers, and help prevent offshoring of jobs.

Response: DHS appreciates the commenters' reference to research suggesting that high-skilled foreign workers, including H-1B workers, complement U.S. workers and may contribute to innovation, collaboration, and economic growth. However, DHS disagrees with the commenters that the new weighted selection process would restrict H-1B visas. The rule is designed to increase the chance of selection for higher-paid, higher-skilled beneficiaries in years of excess demand for numerically limited H-1B visas. The rule does not restrict access to the program, reduce the number of H-1B workers, or respond to general labor-market effects. Also, the analysis cited by the commenter does not suggest that a reduction in the share of H-1B workers in an occupation would increase unemployment or lower wage growth. The studies the commenter cites generally examine correlations between higher H-1B presence and positive labor-market indicators. These studies do not establish causality.

c. Impacts on USCIS

Comment: One commenter predicted that the new rule would result in a greater burden on USCIS employees to examine and differentiate between occupational definitions, increasing the time spent reviewing each petition. Another commenter suggested that verification requirements of ensuring that the petition wages match registration wages could increase processing times and increase operational costs for USCIS, potentially leading to increased fees.

Response: DHS agrees that the new weighted selection process will require updates to USCIS IT systems for registration and additional time by USCIS adjudicators to review newly required information during the adjudication of the petition. DHS notes that if the rule increases USCIS' costs, then the fee schedule adjustment would be determined at USCIS' next comprehensive biennial fee review.

5. Benefits

Comment: A commenter supporting the proposed weighted selection process stated that a benefit of the rule could be increased average salaries in specialty occupations and that could raise wages for U.S. workers. The commenter further stated that this rule could benefit U.S. STEM graduates who are currently facing difficulties finding employment, explaining that U.S. tech workers have been harmed by the abuse of the H-1B program to bring in lower-paid workers compared to U.S. workers.

Response: DHS appreciates comments and analysis submitted by U.S. tech workers who believe their careers have been harmed by decades of industries' reliance on the H-1B program to provide foreign entry-level workers at level I and II wages that are, by definition, below the median for their occupation. The Department aims to implement the numerical cap in a way that incentivizes employers to offer higher wages, or to petition for positions requiring higher skills and higher-skilled aliens, that are commensurate with higher wage levels. The rule would favor the allocation of H-1B

visas to higher-skilled and higher-paid aliens, while maintaining the opportunity for employers to secure H-1B workers at all wage levels. DHS believes that this is expected to increase average salaries among selected H-1B cap-subject workers, while also better protecting the wages, working conditions, and job opportunities of U.S. workers.

Comment: A commenter disagreed with the Department's assessment that increased wages paid to H-1B nonimmigrants would benefit the U.S. economy. While DHS's analysis concluded that higher wages paid to H-1B workers could increase overall economic activity and tax revenue, the commenter stated that U.S. employers are more likely to lose access to essential skills, leading to delays in productivity and innovation, disruption of critical services, and even the abandonment or relocation of projects outside the United States. The commenter wrote that these consequences impose real costs on the American economy that outweigh the theoretical benefits that DHS assessed.

Response: DHS disagrees with the commenter. The commenter's predictions that the rule will cause employers to lose access to essential skills, abandon projects, or relocate work outside the United States are speculative. The commenter did not provide any empirical evidence, such as documented cases, case level data, or any quantitative or qualitative analyses to support the claim. Without substantiating data, DHS cannot verify these claimed impacts or conclude that they would outweigh the benefits identified in the regulatory impact analysis. The rule does not change the statutory cap, restrict eligibility for H-1B classification, limit access for any particular industry, or alter employers' ability to hire.

Comment: A commenter said that estimated benefits (total salary increases) in Table 15 are unverifiable because H-1B petition data are not public and urged DHS to release petition and registration data. The commenter said DHS must provide the underlying data and assumptions so the public can assess the validity and impact of the proposed rule, and that the current record does not provide enough information for

meaningful evaluation. The commenter specifically questioned how DHS converted hourly, weekly, or monthly pay into annual figures and handled implausibly low or high salaries that may reflect typos. Pointing to what the commenter described as factual and mathematical errors, the commenter urged DHS to release the underlying data and assumptions so the public can assess the validity of its conclusions and their impact on the H-1B program. The commenter argued that the notice does not provide enough information for meaningful public evaluation of the proposed rule.

Response: DHS declines to release individual level raw data because DHS believes that the rulemaking record provides sufficient detail to allow meaningful evaluation of the estimates in Table 15 without disclosing raw data. Average annual salary estimates for H-1B cap-subject workers were derived from LCA wage data by converting all reported pay frequencies to annual amounts using standard factors (hourly × 2,080; weekly × 52; monthly × 12; annual as reported) and then computing the mean. To mitigate undue influence from extreme high values and apparent entry errors, annualized wages were top coded at $1,000,000.[99] A review of the lower tail identified no anomalies, so no bottom-coding or exclusions were applied. DHS conducted quality checks to ensure internal consistency in the average annual salary for H-1B cap-subject workers. For these reasons, DHS disagrees that the estimates are unverifiable and regardless, DHS maintains that the current record provides adequate information for public review of the rule's economic impact.

6. Transfers

Comment: A commenter stated that the DHS analysis that estimated $502 million in annual benefits from the proposed rule is misleading. Rather than representing new economic value, the figure reflects a transfer of wages from lower-paid (level I) workers

[99] Wages above one million were recoded to one million to mitigate effects of extreme outliers without shaping the original distribution.

to higher-paid workers. According to the commenter, such a transfer is not a true benefit but a redistribution of existing resources and therefore DHS did not demonstrate that the rule creates new value or improved efficiency.

Response: DHS disagrees with the commenter. As explained in the RIA, the estimated $502 million first-year effect reflects higher average wages among cap-subject H-1B workers selected under the weighted selection process relative to the baseline. The benefit captures the increased amount of total wages paid after implementation. The NPRM discusses separately the transfer of wages from lower-paid workers to higher-paid workers in the RIA. The estimated annual transfer is $858 million; with the fixed number of caps, shifting selections from level I to higher wage levels reallocates earnings from wage level I to higher wage levels. This reallocated portion of the earnings is captured as transfers, which is the total earnings of wage level I workers in the baseline.

7. Paperwork Reduction Act (PRA)

Comment: A few commenters expressed support for the proposed information collection regarding wage levels, stating that these questions are necessary to ensure that the weighted selection process will function as intended and that the H-1B program is used to bring in highly skilled workers. These commenters stated that the burden of reporting the required information is minimal, especially compared to the benefits.

Response: DHS agrees that the proposed information collection is necessary and beneficial, and will finalize the H-1B registration, petition form, and form instructions as proposed.

Comment: A commenter said that the PRA burden is negligible compared to the costs that the failures of the H-1B program has imposed on U.S. workers and the United States economy through lost wages, displaced jobs, foregone innovation, and human costs. The commenter further said that the PRA analysis should be expanded to quantify these costs.

Response: DHS believes that the PRA burden is relatively minor compared to the benefits of this rule. The new information collection is necessary and beneficial to enhance the integrity of the H-1B program and further prevent the harms that the commenter described. DHS declines to expand the PRA analysis because the PRA analysis is limited to the burdens associated with the information collection on the Form I-129, Form I-129 instructions, and the registration tool. The Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*., requires federal agencies to minimize paperwork burdens on the public; it does not require an agency to address costs outside of the information collection requirement.

Comment: A commenter said that DHS's treatment of information collection under the PRA is incomplete. Implementing a weighted selection process for H-1B visas would require new or revised information to be collected during registration, such as offered wage, DOL OEWS wage level, SOC code, and worksite location. These requirements would increase the time and cost for each registration, especially for employers without in-house immigration counsel, resulting in hundreds of thousands of additional burden hours and millions of dollars in annual costs. The commenter asserted that the proposal does not provide a clear, itemized accounting of these new burdens or evaluate alternatives to reduce them. The commenter asserts that DHS must publish a revised 60-day PRA notice with specific burden-hour and cost estimates, consider less burdensome alternatives, and obtain Office of Management and Budget (OMB) approval before implementing the proposed process. Another commenter said that because DHS has proposed form revisions to implement this rule, employers will need time not only to review and comment on the proposed revisions, but also to adopt and "operationalize" the revised forms. This commenter said the introduction of revised forms would be "extremely disruptive" to firms already planning for the FY 2027 cap season.

Response: DHS believes that the data collection requirements proposed with the NPRM will provide the information needed to implement the weighted selection process and no additional data elements are being added through this final rule. With no change to the form or instructions resulting from this comment, no change in burden needs to be addressed and updated from the burden estimate included in the NPRM. DHS also believes that the burden estimate associated with the data collections was accurately captured in the proposed rule, and no additional time for comment is necessary. DHS disagrees that the introduction of the new data collection requirements on the revised form will be extremely disruptive. DHS believes that the public has received sufficient notice of the weighted selection process and that employers will have sufficient time to operationalize the new data collection requirements on the revised form.

Comment: A commenter opposed the information collection related to this rule, noting several concerns with the proposed additions to Form I-129, specifically, the proposed addition of questions 7, 8, 9, 10, and 11 on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement. The commenter claimed that these additional questions are unnecessary, inconsistent with DOL processes, outside of DHS's authority, represent a significant burden which was not adequately assessed in the proposed rule, and are beyond the scope of the rule. The commenter also stated that the information collection changes to the registration tool fail to provide adequate guidance to ensure compliance.

Regarding Form I-129, H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement, the commenter claimed the additional questions 7 through 11 are unnecessary, as the LCA already provides information about the SOC code, wage level and area of intended employment. The commenter claimed that these questions are outside the scope of the proposed rulemaking, as these questions relate to the prevailing wage level determination and the specialty occupation determination whereas the

proposed rule is limited to the issue of administering the registration process for cap-subject petitions. The commenter additionally claimed that these questions are ultra vires because they solicit information about how a prevailing wage determination was made during the LCA process, so that USCIS can question whether the appropriate SOC code and wage level was selected. The commenter concluded that this information would be used to "second-guess" DOL's determinations on the LCA which "exceeds USCIS' authority over LCAs because Congress clearly vested the DOL with exclusive authority over LCAs" at INA section 212(n).

Further, the commenter said that DHS failed to adequately assess the burden of adding these questions to the form, as these questions are applicable to all H-1B petitioners, not just those that are cap-subject. The commenter claimed that "[t]he proposed rule lacks any assessment of the impact in terms of the total universe of petitions filed with USCIS that would be subject to and impacted by this change."

Additionally, the commenter noted that the questions did not contain corresponding instructions. The commenter claimed that these questions are overly broad and confusing, and that the lack of instructions is a "fatal error."

Finally, regarding the registration tool, the commenter stated that the proposed form does not provide meaningful guidance for situations in which the OEWS wage information is unavailable for the relevant SOC code. The commenter requested a link to DOL guidance and ideally more detailed instructional language.

Response: DHS disagrees with this commenter. Questions 7 through 11 on the supplement form are directly related to this rule. As stated in the NPRM and in this final rule, the submission of additional information on the petition form (including wage level information and the SOC code) allows USCIS to further improve the integrity of the H-1B cap selection and adjudication processes. Specifically, these new questions allow USCIS to confirm that: the registrant selected the correct wage level for the proffered

position; the position information provided in the selected registration is the same as the information provided in the petition; the position information on the registration was true and correct and represents a bona fide job offer; and the filing of a new or amended petition was not part of an attempt to unfairly increase the odds of selection during the registration (or petition, if applicable) selection process. While DHS acknowledges that these questions have greater applicability beyond these purposes, these questions are nevertheless necessary for USCIS to ensure the integrity of the weighted selection process and the adjudication process.

These questions do not merely duplicate the LCA process. While the LCA does provide information about the SOC code, wage level, and area of intended employment, DHS cannot rely solely on the information provided on the LCA for registration purposes because the LCA process differs from the process by which a registrant selects a wage level on the registration. Specifically, the weighted selection process takes into account the highest wage level that the proffered salary equals or exceeds, whereas the LCA wage level is based solely on the requirements of the position. In instances where the wage level marked on the registration differs from the LCA wage level, USCIS will rely on these questions to assess whether the wage level marked on the registration was appropriate. These questions are necessary for USCIS to determine whether there was any gaming during the registration process, which is fully consistent with USCIS's authority to administer the cap selection process and ensure program integrity.

DHS disagrees with the commenter's assertion that these questions are outside the scope of DHS' authority or that DOL has "exclusive authority over LCAs." Contrary to the commenter's assertion, DHS has broad authority to administer and enforce the INA. *See* INA sec. 103(a)(1), 8 U.S.C. 1103(a)(1). USCIS may consider LCA-related issues in exercising its own authority to administer and enforce the INA, including provisions pertaining to the H-1B program. *See ITServe All., Inc.* v. *DHS,* 71 F.4th 1028, 1037 (D.C.

Cir. 2023) ("[P]olicing compliance with the terms of an LCA plainly constitutes `administration and enforcement' of the INA, which section 1103(a)(1) independently authorizes.").

DHS also disagrees with the claim that the burden estimate was inadequate because all petitioners, not just those that are cap-subject, need to respond to these questions. In the NPRM, DHS estimated the burden of these additional questions "for all H-1B petitions, not just H-1B cap-subject petitions, because these requirements would apply to any H-1B petitions." 90 FR at 46011. DHS believes the proposed placement of these questions in section 1 of the supplement was reasonable, as section 1 requires petitioners to provide general information about the position including the major/primary field of study, rate of pay, SOC code, and NAICS code. DHS will maintain these questions in section 1 of the supplement.

Further, DHS declines to add corresponding instructions for these questions. DHS disagrees that these questions are overly broad and confusing, and instead, believes these questions are self-explanatory. These questions generally derive from DOL prevailing wage guidance, with which most if not all H-1B petitioners should be familiar.[100] For example, question 7, which asks, "What level of education is required for the position?," tracks with step 3 of the DOL guidance, which requires petitioners to compare the education requirement generally required for an occupation to the education requirement in the employer's job offer.

Finally, DHS disagrees that the registration tool fails to provide adequate guidance. As stated in the NPRM, in the limited instance where there is no current OEWS prevailing wage information for the proffered position, the registrant would follow DOL guidance on PWDs to determine which OEWS wage level to select on the

[100] While these questions derive from DOL prevailing wage guidance, DHS emphasizes that these questions serve different purposes than the LCA.

registration. 90 FR 45986, 45993 (Sept. 24, 2025). This sentence included a footnote to the proper guidance in effect as of the time of publication of the NPRM.[101] It is possible that DOL will update their guidance in the future. In such case, registrants would use any updated version of the Prevailing Wage Determination guidance published by DOL.

8. Other Regulatory Requirements

Comment: A commenter said that the rule contradicts the deregulation goals of Executive Order 14192, *Unleashing Prosperity Through Deregulation.*

Response: DHS disagrees with the commenter's assertion that this rule contradicts E.O. 14192, as this E.O. expressly states that it does not include regulations issued with respect to an immigration-related function of the United States. This final rule pertains to the administration of the annual numerical allocations for H-1B nonimmigrants under section 214(g) of the INA, 8 U.S.C. 1184(g), and is therefore an immigration-related function of the United States.

Comment: A commenter said that DHS should be required to clarify its Unfunded Mandates Reform Act of 1995 (UMRA) determination and explain the basis for concluding that private-sector expenditures do not meet UMRA thresholds because the proposed weighted selection process would likely increase private-sector compliance expenditures (as discussed under the PRA) and create significant distributional effects.

Response: DHS disagrees with the commenter that it should clarify its UMRA statement in the rule. As discussed in that section of this rule, neither the proposed nor the final rule constitute a Federal mandate for purposes of UMRA.[102] Particularly with respect to the Federal private sector mandates, this rule imposes no enforceable duty on

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[101] DOL, Employment and Training Administration (ETA), Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (last modified Nov. 2009)

[102] Under 2 U.S.C. 658(6) and 1502, the term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate, as defined in 2 U.S.C. 658(5) and (7). Specifically, UMRA defines the term "Federal private sector mandate" as any provision in legislation, statute, or regulation that would impose an enforceable duty upon the private sector except, among other things, a duty arising from participation in a voluntary Federal program.

the private sector. Rather the H-1B program is voluntary, and this rule establishes a process for selection where employers may, but are not required to, offer higher wages to beneficiaries they wish to sponsor in order to increase their chances of selection. For these reasons, no further analysis is required.

H. Out of Scope

Numerous commenters provided comments outside the scope of this rulemaking (e.g., comments seeking changes in regulations and agency policies unrelated to the changes proposed in the NPRM). DHS provides a brief overview of the out of scope comments below. However, DHS is not providing substantive responses to those comments as they address policy questions beyond the limited changes proposed and cannot be resolved through this rulemaking. Comments that DHS considered out of scope include:

- General comments about terminating the H-1B program or halting immigration in general;
- General comments about the qualities of H-1B workers;
- General comments calling for comprehensive H-1B reform and urging DHS to make structural changes, including changes to the statutory cap;
- Comments solely about the $100,000 fee pursuant to the H-1B Proclamation;
- Comments about H-1B renewals, including suggestions for new fees for renewals;
- General concerns about staffing or outsourcing companies, and requests to ban such companies from the H-1B program permanently or for a limited period of time;
- Comments that would require DOL action, such as increasing the H-1B prevailing wage and improving DOL audits;

- Comments that would require joint DHS and DOL action, such as enhanced employee screening and deploying a digital platform to aid recruitment of U.S. workers;
- Comments about the L-1 visa program and perceived abuse of that program;
- Comments about the F-1 visa program and OPT/Curricular Practical Training;
- Comments about H-4 nonimmigrant status and employment authorization for H-4 spouses;
- Comments about other immigration programs, including the J-1, O-1, and H-2 nonimmigrant classifications and the EB-1 immigrant classification.

IV. Statutory and Regulatory Requirements

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations."

This rule has been designated a "significant regulatory action" that is economically significant, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. See OMB Memorandum M-25-20, Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation' (Mar. 26, 2025).

1. Summary of Changes From the Notice of Proposed Rulemaking

In this final rule, the estimated 10-year total benefits and transfers are 17 percent higher than in the NPRM. This change reflects updated data on the average tenure of cap-subject H-1B workers, including extensions. The NPRM assumed a 4-year average period of stay as an H-1B nonimmigrant. The final rule uses a 5-year average based on observed extensions, including those available beyond the standard six-year limit. The longer average duration means benefits and transfers accrue for more time, increasing the 10-year totals by accounting for an additional year of annual benefits ($502 million) and transfers ($858 million). Figures in Tables 4 and 16-21 have been updated to reflect the most recent data source and may differ immaterially from those in the NPRM. Table 1.2 summarizes the changes in estimated annualized and discounted impacts from the proposed rule to the final rule.

Table 1.2 Changes in Estimated Impacts From Proposed to Final Rule, (10-year period of analysis, $ millions)

	NPRM		Final Rule	
	Annualized 3 % Discounted	Annualized 7% Discounted	Annualized 3% discounted	Annualized 7% Discounted
Costs	$30	$30	$30	$30
Benefits	$1,672	$1,625	$1,955	$1,885
Total Net Benefits	$1,642	$1,594	$1,925	$1,854
Transfers	$2,859	$2,778	$3,343	$3,222
Source: USCIS Analysis				

2. Summary of Changes

As discussed in the preamble, the purpose of this rule is to amend DHS regulations governing the process by which USCIS selects H-1B registrations for filing of H-1B cap-subject petitions (or H-1B petitions for any year in which the registration requirement will be suspended), by implementing a process in which all unique beneficiaries, while still randomly selected, will be weighted generally according to the highest OEWS wage level that the proffered wage equals or exceeds for the relevant SOC code in the area(s) of intended employment. Specifically, USCIS will weight and select each unique beneficiary (or petition, if registration is suspended) as follows: a beneficiary (or petition) assigned to wage level IV will be entered into the selection pool four times, a beneficiary (or petition) assigned to wage level III will be entered into the selection pool three times, a beneficiary (or petition) assigned to wage level II will be entered into the selection pool two times, and a beneficiary (or petition) assigned to wage level I will be entered into the selection pool one time.

For the 10-year implementation period of the rule (FY2026 through FY2035), DHS estimates the annual costs will be about $30 million. DHS estimates the annual net benefits (undiscounted) will be approximately $472 million in FY2026, $974 million in FY2027, $1,476 million in FY2028, $1,978 million in FY2029, and $2,480 million in each year from FY2030 through FY2035. DHS estimates the annualized net benefits of the rule will be about $1,925 million at 3 percent and $1,854 million at 7 percent. DHS estimates the annual transfers (undiscounted) will be approximately $858 million in FY2026, $1,717 million in FY2027, $2,575 million in FY2028, $3,434 million in FY2029 and $4,292 million in each year from FY2030 through FY2035. DHS estimates the annualized transfers of the rule will be about $3,343 million at 3 percent and $3,222 million at 7 percent.

Table 1.3 provides a detailed summary of estimated quantifiable and

unquantifiable impacts of the final rule.

Table 1.3. Summary of Provisions and Impacts of the Rule			
Final Rule Provisions	**Description of the Change to Provisions**	**Estimated Costs/Transfers of Provisions**	**Estimated Benefits of Provisions**
1. Required Information on the Registration	A registrant will be required to select the box for the highest OEWS wage level that the beneficiary's wage generally equals or exceeds and also will be required to provide the SOC code for the proffered position and the area of intended employment that served as the basis for the OEWS wage level indicated on the registration.	Quantitative: Petitioners - □ DHS estimates costs will be $15 million due to the additional time burden associated with the registration tool. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None □ DHS/USCIS –- Submission of additional wage level information, the SOC code, and area of intended employment on the electronic registration form will allow USCIS to further improve the integrity of the H-1B cap selection processes.
2. Weighting and Selecting Registrations (or petitions if registration is suspended)	DHS implements a wage-based selection process that will operate in conjunction with the existing beneficiary-centric selection process for registrations. When there is random selection USCIS will enter each unique beneficiary (or petition, as applicable) into the selection pool in a weighted manner: a beneficiary (or petition) assigned wage level IV will be entered into the selection pool four times; level III, three times; level II, two times; and level I, one time.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners - □ None Transfer: H-1B workers □ Due to the weighted registration selection process, DHS estimates that $858 million of wages will be transferred from wage level I H-1B workers to higher wage level H-1B workers in FY2026, $1,717 million in FY2027, $2,575 million in FY2028, $3,434 million in FY2029, and $4,292 million in each	Quantitative: Petitioners and H-1B Workers- □ Total benefits of $502 million in FY2026, $1,004 million in FY2027, $1,506 million in FY2028, $2,008 million in FY2029, and $2,510 million in each year from FY2030 through FY2035 estimated in difference of wage paid to the higher wage level H-1B workers. DHS/USCIS - □ By engaging in a wage-level-based weighting of registrations for unique

		year from FY2030 through FY2035. This transfer will be a cost to the wage level I H-1B worker who will lose the wage associated with selected H-1B registrations. This transfer also will be a benefit to the higher wage level H-1B workers who will receive a wage associated with selected H-1B registrations. Petitioners – □ There will be an unquantifiable transfer from the petitioners who would have hired wage level I H-1B workers to the petitioners who will hire workers at higher wage levels. This transfer will be a cost in terms of lost producer surplus to the petitioners who registered at wage level I and were not selected due to the changes. This transfer will be an unquantifiable benefit in terms of gained producer surplus to the petitioners who registered at higher wage levels and got their H-1B registrations selected due to the higher probability of getting selected. □ There will also be an unquantified transfer and benefit from an increase in state and Federal payroll taxes paid to the government by the petitioner. DHS/USCIS – □ None	beneficiaries, DHS will better ensure that initial H-1B visas and status grants will more likely go to the higher-skilled or higher-paid beneficiaries. Facilitating the admission of higher-skilled workers "would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market," consistent with the goals of the H-1B program. Qualitative: Petitioners - □ None DHS/USCIS - □ None
3. Required Information on the Petition	The information required for the registration process will also be collected on the	Quantitative: Petitioners -	Quantitative: Petitioners - □ None

	petition. Petitioners will be required to submit evidence of the basis of the wage level selected on the registration as of the date that the registration underlying the petition was submitted.	□ DHS estimates this cost will be $15 million due to the additional time burden associated with filing the H-1B petition. DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ None	DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS - □ Submission of additional information on the petition form (including wage level information and the SOC code), and evidence of the basis of the wage level selected, will allow USCIS to further improve the integrity of the H–1B cap selection and adjudication processes.
4. Process Integrity	The final rule will require an H-1B petition filed after registration selection to contain and be supported by the same identifying information and position information, including OEWS wage level, SOC code, and area of intended employment provided in the selected registration and indicated on the LCA used to support the petition. The final rule will also allow USCIS to deny a subsequent new or amended petition or revoke an approved petition if USCIS were to determine that the filing of the new or amended petition was part of the petitioner's attempt to unfairly increase odds of selection during the registration selection process.	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ DHS estimates that the final rule could lead to an increase in the number of denials or revocations of H-1B petitions DHS/USCIS – □ None	Quantitative: Petitioners - □ None DHS/USCIS - □ None Qualitative: Petitioners – □ None DHS/USCIS – □ These changes will lead to improved program integrity for USCIS.

In addition to the impacts summarized in Table 1.3, and as required by OMB Circular A-4, Table 2 presents the prepared accounting statement showing the costs and

benefits that will result in this final rule.[103]

Table 2. OMB A-4 Accounting Statement ($ millions, FY 2023*) Time Period: FY 2026 through FY 2035				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation**
BENEFITS				
Annualized Monetized Benefits at 3%	$1,955		Regulatory impact analysis (RIA)	
Annualized Monetized Benefits at 7%	$1,885		RIA	
Annualized quantified, but unmonetized, benefits	N/A		RIA	
Qualitative (unquantified) Benefits	- Submission of additional wage level information, the SOC code, and area of intended employment on the electronic registration form will allow USCIS to further improve the integrity of the H–1B cap selection processes. - By engaging in a wage-level-based weighting of registrations for unique beneficiaries, DHS will better ensure that initial H-1B visas and status grants will more likely go to the higher-skilled or higher-paid beneficiaries. Facilitating the admission of higher-skilled workers "would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market," consistent with the goals of the H-1B program. -The increased wages will also provide an increase in payroll taxes paid to the state and Federal government.		RIA	
COSTS				
			RIA	
Annualized monetized costs at 3%	$30			
Annualized monetized costs at 7%	$30			
Annualized quantified, but unmonetized, costs	N/A		RIA	
Qualitative (unquantified) costs	- DHS estimates that the final rule could lead to an increase in the number of denials or revocations of H-1B petitions		RIA	

[103] OMB, Circular A-4 (Sept. 17, 2003), trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.

TRANSFERS		
Annualized monetized transfers at 3%	$3,332	RIA
Annualized monetized transfers at 7%	$3,222	RIA
From/ To	From wage level I H-1B workers and petitioners to wage level II, III, and IV H-1B workers and petitioners.	RIA
Annualized unquantified monetized transfers	N/A	RIA
Qualitative (unquantified) transfers	There will be an unquantifiable transfer from the petitioners who would hire wage level I H-1B workers to the petitioners who would hire workers at higher wage levels in terms of producer surplus. This transfer will be a cost in terms of lost producer surplus to the petitioners who registered at wage level I and were not selected due to the changes. This transfer will be an unquantifiable benefit in terms of gained producer surplus to the petitioners who registered at higher wage levels and got their H-1B registrations selected due to the higher probability of getting selected.	RIA
From/To	From wage level I H-1B petitioners to wage level II, III, and IV H-1B petitioners.	RIA
Effects on State, local, or Tribal governments	N/A	RIA
Effects on small businesses	DHS estimates that the final rule will result in a significant economic impact on 5,193 small entities (30 percent of small entities that filed a cap-subject petition in FY 2024) due to loss of labor.	Regulatory Flexibility Act (RFA) analysis
Effects on wages	N/A	RIA
Effects on growth	N/A	RIA
*Note that costs are measured in FY 2023 dollars using U.S. Bureau of Labor Statistics (BLS) wages, but benefits and transfers are measured in average of FY 2023 and FY 2024 dollars using filed LCA wages.		

3. Background and Population

The H-1B nonimmigrant visa program allows U.S. employers to temporarily hire foreign workers to perform services in a specialty occupation, services related to a DOD cooperative research and development project or coproduction project, or services of distinguished merit and ability in the field of fashion modeling.[104] A specialty occupation is defined as an occupation that requires the (1) theoretical and practical application of a body of highly specialized knowledge and (2) attainment of a bachelor's or higher degree

[104] *See* INA sec. 101(a)(15)(H)(i)(b), 8 U.S.C. 1101(a)(15)(H)(i)(b); Immigration Act of 1990, Pub. L. 101-649, sec. 222(a)(2), 104 Stat. 4978 (Nov. 29, 1990); 8 CFR 214.2(h).

in the specific specialty (or its equivalent) as a minimum qualification for entry into the occupation in the United States. *See* INA sec. 214(i)(l), 8 U.S.C. 1184(i)(l).

The number of aliens who may be issued initial H-1B visas or otherwise provided initial H-1B nonimmigrant status during any fiscal year has been capped at various levels by Congress over time, with the current numerical limit being 65,000 per fiscal year. *See* INA sec. 214(g)(1)(A), 8 U.S.C. 1184(g)(1)(A). Congress has also provided for various exemptions from this annual numerical limit, including an exemption for 20,000 aliens who have earned a master's or higher degree from a U.S. institution of higher education. *See* INA secs. 214(g)(5) and (7), 8 U.S.C. 1184(g)(5) and (7).

Under the current regulation, all petitioners seeking to file an H-1B cap-subject petition must first electronically submit a registration for each beneficiary on whose behalf they seek to file an H-1B cap-subject petition, unless USCIS suspends the registration requirement. *See* 8 CFR 214.2(h)(8)(iii)(A). USCIS monitors the number of H-1B registrations for unique beneficiaries properly submitted during the announced registration period of at least 14 days. At the conclusion of that period, if more registrations for unique beneficiaries are submitted than projected as needed to reach the numerical allocations, USCIS randomly selects from among unique beneficiaries for whom registrations were properly submitted, the number of unique beneficiaries projected as needed to reach the H-1B numerical allocations. *See* 8 CFR 214.2(h)(8)(iii)(A)(*5*) and (*6*). Under this purely random H-1B registration selection process, USCIS first selects from a pool of all unique beneficiaries, including those eligible for the advanced degree exemption. USCIS then selects from the remaining unique beneficiaries a sufficient number projected as needed to reach the advanced degree exemption. A prospective petitioner that properly registered for a beneficiary who is selected is notified of the selection and instructed that the petitioner is eligible to file an H-1B cap-subject petition for the beneficiary named in the selected registration within a

filing period that is at least 90 days in duration. *See* 8 CFR 214.2(h)(8)(iii)(D)(*3*). When registration is required, a petitioner seeking to file an H-1B cap-subject petition is not eligible to file the petition unless the petition is based on a valid, selected registration for the beneficiary named in the petition. *See* 8 CFR 214.2(h)(8)(iii)(A)(*1*).

In general, prior to filing an H-1B petition, the employer is required to obtain a certified LCA from the DOL. *See* 8 CFR 214.2(h)(4)(i)(B). The LCA collects information about the employer and the occupation for the H-1B worker(s). The LCA requires certain attestations from the employer, including, among others, that the employer will pay the H-1B worker(s) at least the required wage. *See* 20 CFR 655.731 through 735.

This final rule will amend DHS regulations concerning the selection of electronic registrations submitted by or on behalf of prospective petitioners seeking to file H-1B cap-subject petitions (or the selection of petitions, if the registration process is suspended), which includes petitions subject to the regular cap and those asserting eligibility for the advanced degree exemption, to allow for weighting and selection generally based on OEWS wage levels for simultaneously submitted registrations (including registrations submitted within the same window of time). When applicable, USCIS will weight and select the registrations for unique beneficiaries (or petitions) received generally based on the highest OEWS wage level that the beneficiary's proffered wage would equal or exceed for the relevant SOC code and in the area(s) of intended employment. Although the allocation of regular cap (65,000) slots and advanced degree exemption (20,000) slots are approximately 75 percent and 25 percent respectively, the multiple-stage random selection process results in an increased probability that H-1B beneficiaries with a qualifying master's degree or higher will be selected.

Table 3 shows the number of H-1B registrations received for beneficiaries

without a qualifying master's degree (Non-master's), and with a qualifying master's degree or above (Master's or higher) for FY 2020 through FY 2024.[105] Table 3 includes the number of unique beneficiaries because DHS implemented a beneficiary-centric selection process for H-1B registrations in FY 2024 (for the FY 2025 cap selection process), which is when USCIS started selecting registrations by unique beneficiary instead of selecting by registration. 89 FR 7456 (Feb. 2, 2024). Based on a 5-year annual average, DHS estimates the annual average receipts of registrations to be 465,523. The 5-year annual average of registrations received for non-master's is 299,935, the 5-year annual average of registrations received for master's or higher is 165,587, and the 5-year annual average of number of unique beneficiaries with eligible registrations is 320,711.

Table 3. H-1B Registrations for FY 2020 through FY 2024

Fiscal Year	Number of Registrations (Non-master's + Master's or higher)	Non-master's	Master's or higher	Number of Unique Beneficiaries with Eligible Registrations
2020	274,237	148,142	126,095	118,026
2021	308,613	161,820	146,793	235,435
2022	483,927	334,360	149,567	356,633
2023	780,884	529,530	251,354	450,354
2024	479,953	325,825	154,128	443,108
5-Year Total	**2,327,614**	**1,499,677**	**827,937**	**1,603,556**
5-Year Average	**465,523**	**299,935**	**165,587**	**320,711**

Source: USCIS, OPQ, Benefits Hub, queried 3/2025, TRK #17347. Registrations submitted in each fiscal year are for the beneficiaries to begin work as an H-1B nonimmigrant the following fiscal year. Cap-subject petitions filed in each fiscal year are generally for the beneficiaries to begin work as H-1B nonimmigrants the following fiscal year.

Table 4 shows the number of H-1B cap-subject petitions (Form I-129, Petition for Nonimmigrant Worker) received for non-master's and master's or higher as well as historical Form G-28 filings by attorneys or accredited representatives accompanying H-1B cap-subject petitions for FY 2020 through FY 2024. DHS notes that these forms are not mutually exclusive. Based on the 5-year average, DHS estimates 80 percent of H-1B

[105] The terms "Non-master's" and "Master's or higher" used in this analysis refer to the beneficiary's degree type, not which cap type they were selected under.

cap-subject petitions will be filed with Form G-28.[106] Although the advanced degree exemption cap is 20,000, there are more petitions for beneficiaries with master's or higher degrees than 20,000 because some beneficiaries with master's or higher degrees are selected during the regular cap selection process. *See* 8 CFR 214.2(h)(8)(iii)(A)(*5*).

Table 4. H-1B Cap-Subject Petitions Received for FY 2020 through FY 2024

Fiscal Year	H-1B Cap-Subject Petitions Received (Non-master's + Master's or higher)	Non-master's	Master's or higher	Number of Petitions Filed with Form G-28*
2020	100,498	40,740	59,758	82,740
2021	90,104	40,641	49,463	73,157
2022	94,702	51,046	43,656	74,970
2023	92,830	50,533	42,297	74,372
2024	96,367	48,933	47,434	76,619
5-Year Total	**474,501**	**231,893**	**242,608**	**381,858**
5-Year Average	**94,900**	**46,379**	**48,522**	**76,372**

Source: USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265, TRK #19261 (Form G-28 data queried 10/2025)
Number of Petitions Filed with Form G-28*: This column's values differ from the NPRM because the NPRM presented data by fiscal year of G-28 submission. DHS revised this column to align with the rest of the columns, which generally are H-1B cap-subject petitions filed in each fiscal year for the beneficiaries to begin work as H-1B nonimmigrants the following fiscal year.

In this analysis, DHS uses historical data of both registrations and received petitions to estimate the future registration and petition population. Specifically, DHS uses 5-year averages to estimate the number of registrations and H-1B cap-subject petitions received annually. DHS does not adjust these estimates to account for the H-1B Proclamation because, as discussed earlier in this preamble, (1) that Proclamation applies to only a subset of H-1B petitions, (2) exceptions to the $100,000 payment may be granted by the Secretary of Homeland Security to any individual alien, all aliens working for a company, or all aliens working in an industry; and (3) the H-1B Proclamation will expire, absent extension, 12 months from its effective date. This rule, in contrast, will continue indefinitely. DHS acknowledges that the rule's effects could differ in years

[106] Calculation: 76,372 5-Year Average Forms G-28 ÷ 94,900 5-Year Average Form I-129 petitions = 80 percent.

when the H-1B Proclamation or a similar policy is in effect, but for the reasons stated above DHS is unable to adjust for the potential impacts of the Proclamation.

4. Costs, Transfers, and Benefits of the Final Rule

a. Required Information on the Registration

For purposes of the weighting and selection process in this rulemaking, a registrant will be required to select the box for the highest OEWS wage level ("wage level IV," "wage level III," "wage level II," or "wage level I") that the beneficiary's proffered wage generally equals or exceeds for the relevant SOC code in the area(s) of intended employment. *See* new 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*). The registrant will also be required to provide the appropriate SOC code of the proffered position and the area of intended employment that served as the basis for the OEWS wage level indicated on the registration, in addition to any other information required on the electronic registration form (and on the H-1B petition) as specified in the registration form instructions.

For registrants relying on a prevailing wage that is not based on the OEWS survey, if the proffered wage is less than the corresponding level I OEWS wage, the registrant will select the "wage level I" box on the registration form. *See* new 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*). If the proffered wage is expressed as a range, the registrant will select the OEWS wage level that the lowest wage in the range will equal or exceed. If the H-1B beneficiary will work in multiple locations, or in multiple positions if the registrant is an agent, the registrant will select the box for the lowest equivalent wage level among the corresponding wage levels for each of those locations or each of those positions and will list the location corresponding to that lowest equivalent wage level as the area of intended employment.[107] *Id.* The provision to require a registrant to select the lowest among the corresponding wage levels if a beneficiary will work in multiple locations, or

[107] Providing the area of intended employment that corresponds to the lowest equivalent wage level at registration will not preclude the registrant, if selected and eligible to file a petition, from listing any additional concurrent work location(s) on the petition.

in multiple positions if the registrant is an agent, is meant to prevent gaming of the weighted selection process.[108]

DHS recognizes that some occupations do not have current OEWS prevailing wage information available on DOL's OFLC Wage Search website.[109] In the limited instance where there is no current OEWS prevailing wage information for the proffered position, such that there are not four wage levels for the occupational classification or there are not wage data for the area of intended employment, the registrant will follow DOL guidance on PWDs to determine which OEWS wage level to select on the registration.[110] DHS expects each registrant will be able to identify the appropriate SOC code for the proffered position because all petitioners are required to identify the appropriate SOC code for the proffered position on the LCA, even when there are no applicable wage level data available or the OEWS survey is not used as the prevailing wage source on the LCA. Using the SOC code and the previously mentioned DOL guidance, all registrants will be able to determine the appropriate OEWS wage level for purposes of completing the registration, regardless of whether they were to specify an OEWS wage level or utilize the OEWS program as the prevailing wage source on an LCA.

This change will add additional requirements for registrants. DHS estimates that this change will increase the time burden by 20 minutes for each registration (0.3333 hours) from 36 minutes (0.6 hours) to 56 minutes (0.9333 hours). The change will offer

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[108] For instance, in the case of multiple positions, if DHS were to instead require registrants to select the box for the highest corresponding OEWS wage level that the proffered wage were to equal or exceed, then a petitioner could place the beneficiary in a lower paying position for most of the time and a higher paying position for only a small percent of the time, but use that higher paying position to increase their chances of being selected in the registration process. Similarly, in the case of multiple locations, a petitioner could place the beneficiary in a higher paying locality for only a small percent of time but use that higher paying locality to increase their chances of being selected in the registration process.

[109] OFLC, a component of DOL, administers the OFLC Wage Search for OEWS prevailing wage information at https://flag.dol.gov/wage-data/wage-search (last visited Dec. 8, 2025).

[110] DOL, ETA, Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (last modified Nov. 2009), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf.

qualitative benefits. Specifically, submission of additional wage level information and the SOC code on both an electronic registration and on Form I-129 will result in the benefit of allowing USCIS to further improve the integrity of the H-1B cap selection and adjudication processes.

Table 5 shows the number of total H-1B registrations and estimated total registrations with Form G-28 attached. Based on a 5-year annual average, DHS estimates the annual average registrations are 465,523. The estimated 5-year annual average of registrations with Form G-28 attached is 180,970.

Table 5. H-1B Registrations and Attached Form G-28 for FY 2020 through FY 2024

Fiscal Year	Total Registrations (A)	Total Eligible Registrations (B)	Eligible Registrations with Form G-28 (C)	Percentage of Eligible Registrations with Form G-28 (C/B)	Estimated Total Registrations with Form G-28* (A x C/B)
2020	274,237	269,424	74,356	28%	75,684
2021	308,613	301,447	147,350	49%	150,853
2022	483,927	474,421	205,335	43%	209,449
2023	780,884	758,994	249,579	33%	256,777
2024	479,953	470,342	207,634	44%	211,877
5-Year Total	**2,327,614**	**2,274,628**	**884,254**	**39%**	**904,852**
5-Year Average	**465,523**	**454,926**	**176,851**	**39%**	**180,970**

Source: USCIS OPQ, Benefits Hub, queried 3/2025, TRK #17518.
*Estimated Total Registrations with Form G-28 is estimated using the Percentage of Eligible Registrations with Form G-28 and Total Registrations.

DHS estimates the opportunity cost of time of gathering and preparing information by multiplying the estimated increased time burden for those submitting an H-1B registration by the compensation rate of a human resources (HR) specialist, in-house lawyer, or outsourced lawyer, respectively.

In order to estimate the opportunity cost of time for completing and submitting an H-1B registration, DHS assumes that a prospective petitioner will use an HR specialist,

an in-house lawyer, or an outsourced lawyer to prepare an H-1B registration.[111] DHS uses the mean hourly wage of $36.57 for HR specialists to estimate the opportunity cost of the time for preparing and submitting an H-1B registration.[112] Additionally, DHS uses the mean hourly wage of $84.84 for in-house lawyers to estimate the opportunity cost of the time for preparing and submitting an H-1B registration.[113]

DHS accounts for worker benefits when estimating the total costs of compensation by calculating a benefits-to-wage multiplier using the Bureau of Labor Statistics (BLS) report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS estimates that the benefits-to-wage multiplier is 1.45 and, therefore, is able to estimate the full opportunity cost per registration, including employee wages and salaries and the full cost of benefits, such as paid leave, insurance, retirement, etc.[114] DHS multiplied the average hourly U.S. wage rate for HR specialists and in-house lawyers by 1.45 to account for the full cost of employee benefits, for a total of $53.03 per hour for an HR specialist[115] and $123.02 per hour for an in-house lawyer.[116] DHS recognizes that a firm may choose, but is not required, to outsource the preparation of these registrations and, therefore, presents two wage rates for lawyers. To determine the full opportunity costs of time if a firm hired an outsourced lawyer, DHS multiplied the average hourly U.S. wage rate for lawyers by

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[111] DHS limited its analysis to HR specialists, in-house lawyers, and outsourced lawyers to present estimated costs. However, DHS understands that not all entities employ individuals with these occupations and, therefore, recognizes equivalent occupations may also prepare and submit these registrations.

[112] *See* BLS, DOL, Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2023, 13-1071 Human Resources Specialists, https://www.bls.gov/oes/2023/may/oes131071.htm (last modified Apr. 3, 2024).

[113] *See* BLS, DOL, Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2023, 23-1011 Lawyers, https://www.bls.gov/oes/2023/may/oes231011.htm (last modified Apr. 3, 2024).

[114] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) ÷ (Wages and Salaries per hour) = ($45.42 Total Employee Compensation per hour) ÷ ($31.29 Wages and Salaries per hour) = 1.45158 = 1.45 (rounded). *See* BLS, DOL, Economic News Release, Employer Costs for Employee Compensation - December 2023, Table 1. Employer Costs for Employee Compensation by ownership [Dec. 2023] (Mar. 13, 2024), https://www.bls.gov/news.release/archives/ecec_03132024.htm. The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

[115] Calculation: $36.57 × 1.45 = $53.03 total wage rate for HR specialist.

[116] Calculation: $84.84 × 1.45 = $123.02 total wage rate for in-house lawyer.

2.5 for a total of $212.10 to approximate an hourly cost for an outsourced lawyer to prepare and submit an H-1B registration.[117]

DHS does not know the exact number of registrants who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and, therefore, provides an average. The estimated number of registrations with Form G-28 attached is 180,970 from Table 5. Table 6 shows the current total annual average cost for a lawyer to complete the registration on behalf of a prospective petitioner. The current opportunity cost of time for submitting an H-1B registration using an attorney or other representative is estimated to range from $13,357,758 to $23,030,242, with an average of $18,194,000.

Table 6. Current Average Opportunity Costs of Time for Submitting an H-1B Registration with an Attorney or Other Representative

	Population Submitting with a Lawyer	**Time Burden to Complete H-1B Registration (Hours)**	**Cost of Time**	**Total Current Opportunity Cost**
	A	B	C	D=(A×B×C)
In-house lawyer	180,970	0.6	$123.02	$13,357,758
Outsourced lawyer	180,970	0.6	$212.10	$23,030,242
Average				**$18,194,000**
Source: USCIS analysis.				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H-1B registration without a lawyer, DHS applies the estimated public reporting time burden (0.6 hours) to the compensation rate of an HR specialist. Table 7 estimates the current total annual opportunity cost of time to HR specialists completing and submitting an H-1B registration will be approximately $9,053,907.

Table 7. Current Average Opportunity Costs of Time for Submitting an H-1B Registration, without an Attorney or Accredited Representative

[117] Calculation: $84.84 ×2.5 = $212.10 total wage rate for an outsourced lawyer.
The DHS analysis in Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 83 FR 24905 (May 31, 2018), used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages.
The U.S. Immigration and Customs Enforcement rule, Final Small Entity Impact Analysis: 'Safe-Harbor Procedures for Employers Who Receive a No-Match Letter' at G-4 (Aug. 25, 2008), https://www.regulations.gov/document/ICEB-2006-0004-0922, also used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. The methodology used in that analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule.

	Population	Time Burden to Complete H-1B Registration (Hours)	HR Specialist's Opportunity Cost of Time	Total Opportunity Cost of Time
	A	B	C	D=(A×B×C)
Estimate of H-1B Registrations	284,553	0.6	$53.03	**$9,053,907**
Source: USCIS analysis. Note that 284,553 = 465,523 (number of total registrations) − 180,970 (number of registrations filed by lawyers) from Table 5.				

Table 8 shows the final estimated time burden will increase by 20 minutes (0.3333 hours) to 56 minutes (0.9333 hours) to the eligible population and compensation rates of those who may submit registrations with or without a lawyer due to changes in the instructions, adding clarifying language regarding denying or revoking approved H-1B petitions, adding passport or travel document instructional language, and providing the corresponding wage level, the appropriate SOC code of the proffered position, and the area of intended employment that served as the basis for the OEWS wage level indicated on the registration. DHS does not know the exact number of registrants who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. DHS estimates that these current opportunity costs of time for submitting an H-1B registration using an attorney or other representative will range from $20,777,992 to $35,823,542, with an average of $28,300,767.

Table 8. New Opportunity Costs of Time for an H-1B Registration, Registrants Submitting with an Attorney or Other Representative

	Population of Registrants Submitting with a Lawyer	Time Burden to Complete H-1B Registration (Hours)	Cost of Time	Total Opportunity Cost
	A	B	C	D=(A×B×C)
In House Lawyer	180,970	0.9333	$123.02	$20,777,992
Outsourced Lawyer	180,970	0.9333	$212.10	$35,823,542
Average				**$28,300,767**
Source: USCIS analysis.				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H-1B registration without a lawyer, DHS applies the final estimated public reporting time burden (0.9333 hours) to the compensation rate of an HR specialist. Table 9 estimates the current total annual opportunity cost of time to HR specialists completing and submitting the H-1B registration will be approximately $14,083,353.

Table 9. Final Average Opportunity Costs of Time for an H-1B Registration, Submitting without an Attorney or Accredited Representative				
	Population	**Time Burden to Complete H-1B Registration (Hours)**	**HR Specialist's Opportunity Cost of Time ($48.40/hr.)**	**Total Opportunity Cost of Time**
	A	B	C	D=(A×B×C)
Estimate H-1B Registration	284,553	0.9333	$53.03	**$14,083,353**
Source: USCIS analysis.				

DHS estimates the total additional annual cost for attorneys and HR specialists to complete and submit H-1B registrations will be approximately $15,136,213 as shown in Table 10. This table shows the current total opportunity cost of time to submit an H-1B registration and the final total opportunity cost of time.

Table 10. Total Costs to Complete the H-1B Registration	
Average Current Opportunity Cost Time for Lawyers to Complete the H-1B Registration	$18,194,000
Average Current Opportunity Cost Time for HR Specialist to Complete the H-1B Registration	$9,053,907
Total (A)	**$27,247,907**
Average Final Opportunity Cost Time for Lawyers to Complete the H-1B Registration	$28,300,767
Average Final Opportunity Cost Time for HR Specialist to Complete the H-1B Registration	$14,083,353
Total (B)	**$42,384,120**
Final Additional Opportunity Costs of Time to Complete the H-1B Registration (Total (B) minus Total (A))	**$15,136,213**
Source: USCIS analysis.	

b. Weighting and Selecting Registrations

In the current selection process for H-1B registrations, USCIS randomly selects from among properly submitted registrations the number of unique beneficiaries

projected as needed to reach the H-1B numerical allocations. This final rule will change the way USCIS selects unique beneficiaries, and the registrations submitted on their behalf for H-1B cap-subject petitions (or petitions, if the registration process is suspended), including those eligible for the advanced degree exemption. USCIS will weight and select the registrations for unique beneficiaries (or petitions) received generally on the basis of the highest OEWS wage level that the beneficiary's proffered wage will equal or exceed for the relevant SOC code in the area(s) of intended employment. The changes to weight and select registrations will result in the benefit of increasing the chance that registrations or petitions, as applicable, will be selected for higher paid, and presumably higher-skilled or higher-valued, beneficiaries.

Congress has established the limits on certain initial H-1B nonimmigrant visas or status grants each fiscal year not to exceed 65,000 (regular cap) with an annual exemption for those who have earned a qualifying U.S. master's degree or higher from a U.S. institution of higher education not to exceed 20,000 (advanced degree exemption). USCIS monitors the number of H-1B registrations for unique beneficiaries it receives during the announced registration period. At the conclusion of the registration period, USCIS randomly selects from among properly submitted registrations a number of registrations for unique beneficiaries projected as needed to reach the H-1B numerical allocations. Although the allocation of regular cap (65,000) and advanced degree exemption (20,000) are approximately 75 percent and 25 percent respectively, the multiple-stage random selection process results in an increased probability that H-1B beneficiaries with a master's degree or higher will be selected. Table 11 shows the historical numbers of H-1B cap-subject petitions received by wage level and by the beneficiary's degree type for FY 2020 through FY 2024. Based on the 5-year annual average, DHS estimates the annual average receipts of H-1B cap-subject petitions are

94,900 per year. The 5-year annual average of non-master's degree receipts is 46,379, and the 5-year annual average of master's or higher degree receipts is 48,522.

Table 11. Form I-129, H-1B Cap-Subject Petition Received by Wage Level for FY 2020 through FY 2024

Fiscal Year		Level I	Level II	Level III	Level IV	N/A*	All Levels
2020		**26,152**	**53,665**	**10,854**	**4,531**	**5,296**	**100,498**
	Non-master's	6,962	23,380	5,530	2,881	1,987	40,740
	Master's or higher	19,190	30,285	5,324	1,650	3,309	59,758
2021		**21,990**	**49,130**	**10,515**	**4,353**	**4,116**	**90,104**
	Non-master's	6,475	24,023	5,663	2,810	1,670	40,641
	Master's or higher	15,515	25,107	4,852	1,543	2,446	49,463
2022		**22,361**	**54,020**	**11,143**	**4,502**	**2,676**	**94,702**
	Non-master's	8,570	32,628	6,140	2,683	1,025	51,046
	Master's or higher	13,791	21,392	5,003	1,819	1,651	43,656
2023		**26,107**	**48,656**	**10,416**	**4,205**	**3,446**	**92,830**
	Non-master's	11,082	30,060	5,675	2,430	1,286	50,533
	Master's or higher	15,025	18,596	4,741	1,775	2,160	42,297
2024		**29,435**	**43,558**	**10,370**	**4,431**	**8,573**	**96,367**
	Non-master's	11,111	24,782	5,897	2,734	4,409	48,933
	Master's or higher	18,324	18,776	4,473	1,697	4,164	47,434
		126,045	**249,029**	**53,298**	**22,022**	**24,107**	**474,501**
5-Year Total	Non-master's	44,200	134,873	28,905	13,538	10,377	231,893
	Master's or higher	81,845	114,156	24,393	8,484	13,730	242,608
		25,209	**49,806**	**10,660**	**4,404**	**4,821**	**94,900**
5-Year Average	Non-master's	8,840	26,975	5,781	2,708	2,075	46,379
	Master's or higher	16,369	22,831	4,879	1,697	2,746	48,522

Source: USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2018 – FY 2024. DOL data downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance.
*N/A: Approximately 5 percent of H-1B cap-subject receipts have wage levels not available. Most N/As use an independent survey or other survey sources to determine the prevailing wage rather than using the OFLC online data center provided by DOL.

Table 12 presents the percentage of H-1B cap-subject receipts by wage levels for the estimated 94,900 average annual receipts, based on corresponding 5-year averages for FY 2020 through FY 2024. For both non-master's degree and master's or higher degree, wage level II has the most H-1B receipts followed, in order, by level I, level III, and level IV. Master's or higher degree petitions have slightly more receipts in level I and level II as shown by the cumulative percentage of 86 percent compared to the non-master's degree petitions' cumulative percentage of 81 percent. Currently, wage level data are only collected for those beneficiaries who were selected in the registration selection process and on whose behalf a Form I-129 for H-1B petition was filed because H-1B

petitioners must obtain a certified LCA from DOL that includes the applicable wage level. An LCA is not a requirement for registration. Therefore, DHS does not have information on the number of registrations for each wage level. DHS assumes that the H-1B cap-subject petition receipts percentages by wage levels from LCA data are predictive of the H-1B registrations percentages by wage levels. However, to the extent that proffered wages may exceed the wage levels indicated on the LCA, the projections in this discussion will represent the upper bound of the impact of the final rule. DHS does not have a way to estimate how many registrants will select a higher wage level than required on the LCA, so DHS uses LCA wage level data as a reasonable proxy for registration wage level data.

DHS uses the percentages of H-1B cap-subject petition receipts by wage level to estimate the distribution of registrations for beneficiaries by wage level. Table 12 shows that the distribution of current H-1B cap-subject petition receipts, 94,900, by wage level is 28 percent, 55 percent, 12 percent, and 5 percent for wage levels I, II, III, and IV, respectively. DHS uses the 5-year average of the number of unique beneficiaries with eligible registrations, 320,711 from Table 3 and applies the distribution of current H-1B cap-subject petition receipts to estimate the number of unique beneficiaries with eligible registrations by wage level shown in Table 12.

Table 12. Percentage of H-1B Cap-Subject Receipts and Estimated Number of Beneficiaries with Eligible Registrations by Wage Level for 5-Year Average for FY 2020 through FY 2024

5-Year Average	Level I	Level II	Level III	Level IV	Total
Non-master's	**9,254**	**28,238**	**6,052**	**2,834**	**46,379**
Total %	20%	61%	13%	6%	
Cumulative %	20%	81%	94%	100%	
Master's or higher	**17,351**	**24,201**	**5,171**	**1,799**	**48,522**
Total %	36%	50%	11%	4%	
Cumulative %	36%	86%	96%	100%	
Cap-Subject Total	**26,605**	**52,439**	**11,223**	**4,633**	**94,900**
	28%	55%	12%	5%	100%
Estimated Number of Beneficiaries with Eligible Registration by Wage Level	**89,911**	**177,216**	**37,928**	**15,657**	**320,711**

Source: USCIS analysis. N/A counts in H-1B cap-subject receipts by wage level were redistributed among wage levels using the percent of total. For example, for wage level II, 28,238 is 26,975, the 5-year average of non-master's for level II from Table 11, plus 1,264, which is 61 percent of the total N/A count, 2,075.
The estimated number of beneficiaries with eligible registrations by wage level is estimated using percentages by wage level (level I, 28%; level II, 55%; level III, 12%; and level IV, 5%) of the 5-year average of the number of beneficiaries with eligible registrations, 320,711. The 5-year annual average of number of beneficiaries with eligible registrations, 320,711, is from Table 3.

This final rule will change the way USCIS selects registrations for H-1B cap-subject petitions (or petitions, if the registration process is suspended), including those eligible for the advanced degree exemption. When random selection is required, USCIS will weight and select unique beneficiaries with properly submitted registrations generally based on the highest OEWS wage level that the beneficiary's proffered wage will equal or exceed for the relevant SOC code in the area(s) of intended employment. A registrant will be required to select the box for the highest OEWS wage level ("wage level IV," "wage level III," "wage level II," or "wage level I") that the proffered wage generally equals or exceeds for the relevant SOC code in the area of intended employment or otherwise select the appropriate box according to the form instructions. Registrations for unique beneficiaries or petitions will be assigned to the relevant OEWS wage level and entered into the selection pool as follows: registrations for unique beneficiaries or petitions assigned wage level IV will be entered into the selection pool four times, those assigned wage level III will be entered into the selection pool three times, those assigned wage level II will be entered into the selection pool two times, and those assigned wage level I will be entered into the selection pool one time. Each unique beneficiary will only be counted once toward the numerical allocation projections, regardless of how many registrations were submitted for that beneficiary or how many times the beneficiary is entered in the selection pool. If a beneficiary has multiple registrations, the unique beneficiary will be allotted to the lowest wage level of all registrations submitted on his or her behalf. This rule will increase the odds of being selected to file H-1B cap-subject petitions for beneficiaries with proffered wages that

correspond to higher wage levels. DHS examines the impacts of the change in three different dimensions: probability of being selected, estimated number of unique beneficiaries selected by wage levels, and economic impact of the change.

Under the current H-1B selection process, if more registrations for unique beneficiaries are submitted than projected as needed to reach the numerical allocations, USCIS randomly selects from among unique beneficiaries for whom registrations were properly submitted, the number of unique beneficiaries projected as needed to reach the H-1B numerical allocations. Under this random H-1B registration selection process, USCIS first selects from a pool of all unique beneficiaries, including those eligible for the advanced degree exemption. USCIS then selects from the remaining unique beneficiaries a sufficient number projected as needed to reach the advanced degree exemption. 8 CFR 214.2(h)(8)(iii)(A)(*5*) through (*6*). This process allows beneficiaries who have earned a qualifying U.S. master's degree or higher a greater chance to be selected. The final rule will maintain this two-stage selection process to keep a higher chance of beneficiaries with a qualifying U.S. master's degree or higher of being selected. However, for the simplicity of comparing the probabilities of being selected in the current random selection process and in the weighted selection process, DHS combines the pool of beneficiaries for the regular cap and the advanced degree exemption and presents the probabilities of being selected at different wage levels in this analysis.[118]

Table 13 compares the probabilities of being selected and corresponding estimated petition receipts by wage level for the current random selection process and new weighted selection process. Under the current random selection process in which every unique beneficiary has an equal chance of being selected, the probability of being

[118] DHS recognizes combining the pool of beneficiaries for the regular cap and the advanced degree exemption would result in a decrease in wage level I beneficiaries under the final rule. However, modeling the weighted selection as a single pooled draw across all registrations is more tractable and clarifies the rule's impact with minor loss of accuracy.

selected to file an H-1B cap-subject petition for a unique beneficiary is 29.59 percent across all the wage levels. Under the new weighted selection, DHS estimates that the probability of being selected to file a H-1B cap-subject petition for a unique beneficiary will be 15.29 percent for level I, 30.58 percent for level II, 45.87 percent for level III, and 61.16 percent for level IV.[119] The estimated petition receipts for the current selection process and new selection process are shown in Table 13. DHS estimates that the percentage change in probability of being selected to file an H-1B cap-subject petition from the current to the new process will decrease by 48 percent for level I and will increase by 3 percent, 55 percent, and 107 percent for level II, level III, and level IV, respectively. DHS projects, based on the weighted selection process, that the probability of being selected to file an H-1B cap-subject petition will be allocated more to levels II, III, and IV, and less to level I.

Table 13. Probability of Being Selected and Estimated H-1B Cap-Subject Petition Receipts by Wage Level

	Level I	Level II	Level III	Level IV	Total
(A) Estimated Number of Beneficiaries with Eligible Registration by Wage Level	**89,911**	**177,216**	**37,928**	**15,657**	**320,711**
(B) Probability of Being Selected to File H-1B Cap-Subject Petitions under Current Random Selection by Wage Level	29.59%	29.59%	29.59%	29.59%	
(C) Estimated Petition Receipts (Random Selection)	26,605	52,439	11,223	4,633	94,900
(D) Probability of Being Selected to File H-1B Cap-Subject Petitions under New Weighted Selection by Wage Level	15.29%	30.58%	45.87%	61.16%	
(E) Percentage Change in Probability of Being Selected to File H-1B Cap-Subject Petitions from Current to Weighted Selection System	-48.33%	3.35%	55.02%	106.69%	
(F) Estimated Petition Receipts (Weighted Selection)	15,330	55,089	16,243	8,239	94,900

Source: (A) USCIS analysis.
(B) The probability of being selected under random selection is 29.59% = (94,900 ÷ 320,711) × 100% regardless of different wage levels.
(C) = (A) x (B).

[119] Calculating weighted probability is complex due to the involvement of conditional probabilities and distributional assumptions. For this analysis, DHS uses simple weighted probabilities to approximate the expected distribution of each wage level in the sample (see Table 13), comparing probabilities of being selected. The new weighted probability distribution assumes that companies will keep their current wage rates when submitting registrations or petitions. As a result, the analysis may underestimate the number of registrations or petitions for higher-wage positions selected in the future if companies offer higher wages to improve their chance of selection.

(D) The probability of being selected under weighted selection for level I is 15.29% = (94,900 ÷ (89,911 × 1 + 177,216 × 2 + 37,928 × 3 + 15,657 × 4)) × 100%. Level II, 30.58% = (probability of being selected for level I, 15.29%) × 2. Level III, 45.87% = 15.29% × 3. Level IV, 61.16% = 15.29% × 4.
(E) Percentage Change in Probability for Level I = (15.29 - 29.59)/29.59x100%= -48.33%; for Level II, III, and IV follow the same calculation.
(F) Because beneficiaries can be selected only once, DHS simulated the process of selecting registrations; multiplying petitions by selection probabilities ((A) x (D)) does not accurately reflect the selection process because once a person is selected, that person does not re-enter the pool of registrants and would overstate impacts. Since weighted probabilities without replacement are not tractable to compute explicitly, DHS used Monte Carlo simulation to estimate line F.

Table 14 shows the estimated difference in H-1B cap-subject petitions by wage level from the current to the new selection process. DHS applies 85,000, which is the statutory limit on the number of initial H-1B visas, rather than the historical 5-year annual average of H-1B cap-subject petition receipts, which is 94,900,[120] because approximately 85,000 beneficiaries will be granted initial H-1B status and paid the applicable required H-1B wage. The estimated number of annual H-1B cap-subject visas will decrease by 10,099 for level I petitions, and will increase by 2,373 for level II petitions, 4,496 for level III petitions, and 3,230 for level IV petitions.

Table 14. Estimated Distributional Difference in H-1B Cap-Subject Petitions by Wage Level for Current (Random) and New (Weighted) Selection Process

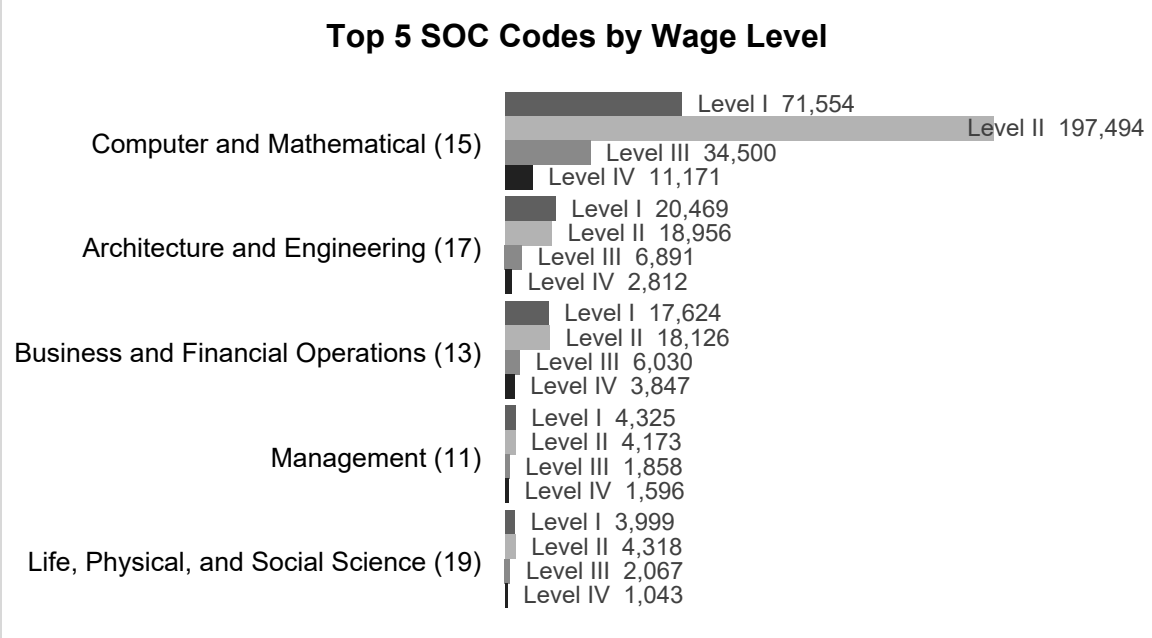
	Level I	Level II	Level III	Level IV	Total
Estimated H-1B Cap-Subject Petition Receipts (Random)	26,605	52,439	11,223	4,633	94,900
Estimated H-1B Cap-Subject Petition Receipts (Weighted)	15,330	55,089	16,243	8,239	94,900
Statutory Limit on the Number of Initial H-1B Visa					85,000
Estimated H-1B Cap-Subject Visa Granted (Random)*	23,830	46,968	10,052	4,150	85,000
Estimated H-1B Cap-Subject Visa Granted (Weighted)*	13,731	49,342	14,548	7,379	85,000
Difference in Estimated H-1B cap-subject Visa Granted from Random to Weighted Selection	-10,099	2,373	4,496	3,230	0

*Note that Estimated H-1B Cap-Subject Visa Granted (Random/Weighted) is equal to Estimated H-1B Cap-Subject Petition Receipts (Random/Weighted) multiplied by 85,000/94,900. This scaling is applied to each wage level.

[120] Note that the estimated number of H-1B cap-subject petitions (94,900) exceeds the number of H-1B visas authorized under the statutory cap (approximately 85,000, after certain deductions are made for certain numerical set-asides) to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

All LCAs that are required for H-1B petitions specify SOC codes for the prospective jobs. The top two SOC major group codes, Computer and Mathematical Occupations (2-digit SOC major group code 15) and Architecture and Engineering Occupations (2-digit SOC major group code 17), make up 81 percent of H-1B cap-subject petitions received in FY 2020 – FY 2024. The top five SOC major group codes make up 96 percent of total petitions. Figure 1 breaks out the wage levels for these SOC codes. The H-1B cap-subject petitions by wage level presented in previous tables show that most of the petitions are at wage level II. As seen in Figure 1, this is driven by Computer and Mathematical Occupations. Petitions for Computer and Mathematical Occupations are overwhelmingly at wage level II, whereas petitions for Architecture and Engineering Occupations are greater at wage level I than wage level II. For the rest of the top five SOC major group codes, the number of H-1B cap-subject petitions filed at wage level II is greater than level I, but not as drastically different as Computer and Mathematical Occupations.

Figure 1. Top Five SOC codes for FY 2020 – FY 2024, by Wage level



Source: USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. Merged with LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2018 – FY 2024.

Given that the analysis estimates a 48 percent drop in selections for wage level I beneficiaries, the distribution of wage levels at the SOC code will determine the effects of the final rule for occupations under that SOC code. DHS examines these effects for the top two SOC major group codes (15 and 17) by breaking out the distribution into 6-digit SOC codes. The results are summarized in Figure 2 and Figure 3.

Of the 470,023 H-1B cap-subject petitions received in FY 2020 – FY 2024, 69 percent (326,000) were associated with SOC major group 15 (Computer and Mathematical Occupations). This major occupation group contains 460 distinct 6-digit SOC codes, each corresponding to a different detailed occupation. Examples of detailed occupations include 15-1252 (Software Developers) and 15-2051 (Data Scientists). The top five detailed occupations make up 71 percent of the 326,000 petitions received under SOC major group 15. Figure 2 details the counts for these five detailed occupations, separated by whether they were grouped at wage level I or at one of the higher wage levels (II, III, IV). As Figure 2 shows, all detailed occupations under SOC major group 15 have counts of petitions in wage level I and in higher wage levels except 15-2041 (Statistician).

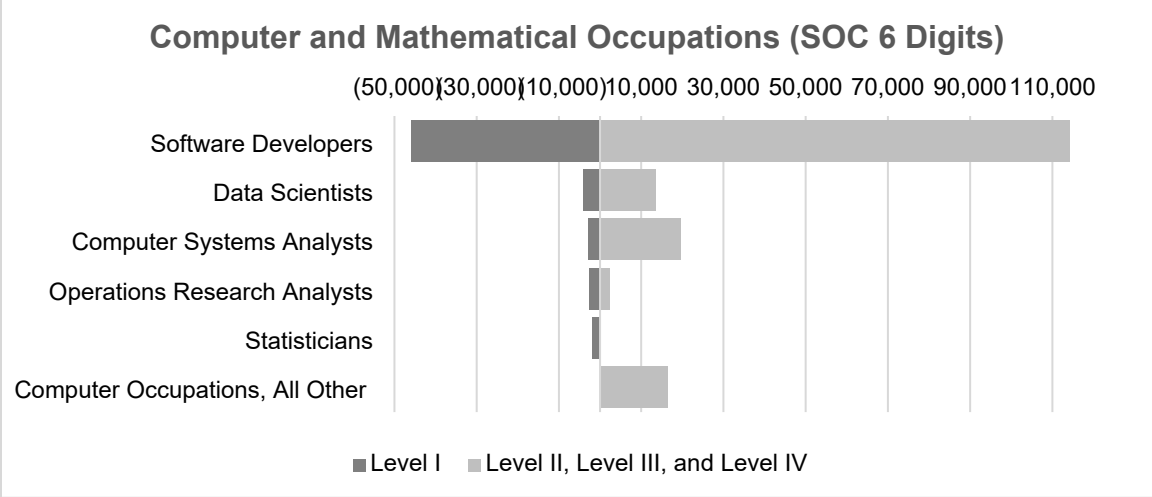
The final rule does not project a significant increase in the selection of higher wage level workers in the 15-2041 (Statistician) occupation.[121] SOC code 15-1299 (Computer Occupations, All Other) is also one of the notable exceptions—it is not one of the top five SOC codes for level I petitions.[122] SOC code 15-1299 is used to encompass detailed occupations that do not have a specific code within the broad group. The final

[121] However, it is possible that such prospective employers already pay a wage that corresponds to a higher wage level such that the chance of selection would not be reduced under the final rule, or that they would choose to pay a wage that corresponds to a higher wage level in order to increase the chance of selection for workers in level I positions.

[122] This does not mean there are no petitions filed at Wage Level I for SOC 15-1299 (Computer Occupations, All Other). The figure shows, by wage level, the top five six-digit SOC codes within the Computer and Mathematical Occupations category. SOC 15-1299 does not rank in the top five at Wage Level I, but it does at Wage Levels II, III, or IV.

rule will have material effects on these detailed occupations since registrations under this code will receive a large boost in probability that they are selected.

Figure 2. Top Five SOC Code 6-Digit in Computer and Mathematical Occupations for FY 2020 – FY 2024, by Wage Level



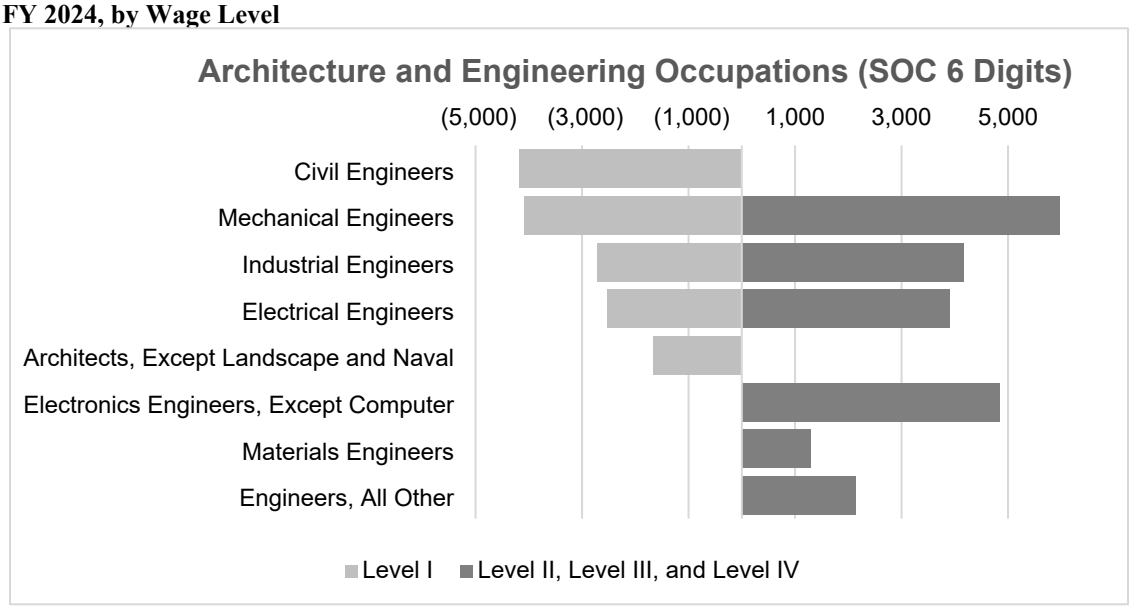
Source: USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. Merged with LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2018 – FY 2024. Note that SOC 6 digits are 2018 SOC classification.

After SOC major group code 15, the major group with the next greatest number of petitioners is SOC major group code 17 (Architecture and Engineering Occupations). This major group had 52,402 petitions filed in FY 2020 through FY 2024. Figure 3 details the counts for the top five detailed occupations within SOC major group code 17 that had the greatest number of petitions in FY 2020 through FY 2024. As for SOC major group code 17, many of these occupations have petition counts in wage level I and in higher wage levels. SOC code 17-2051 (Civil Engineers) and 17-1011 (Architects, Except Landscape and Naval) are also a notable exception since all the petitions under this code in the figure were wage level I. The final rule will reduce the number of selected H-1B registrations for Civil Engineers and Architects by up to 48 percent, assuming such registrations will be submitted at wage level I consistent with historical LCA wage level data for Civil Engineers.[123] On the other hand, the final rule will likely

[123] To the extent that some of these employers may already be paying a wage, or offering to pay a wage, that corresponds to a higher wage level, or may choose to do so, DHS recognizes this projected reduction

increase the number of selected H-1B registrations for SOC code 17-2072 (Electronics Engineers except Computer), SOC code 17-2131 (Materials Engineers), and 17-2100 (Engineers, All Other) since these detailed occupations are not top five SOC codes for wage level I registrations, assuming such registrations will be submitted at higher wage levels consistent with historical LCA wage level data for these occupations.[124]

Figure 3. Top Five SOC Code 6-Digit in Architecture and Engineering Occupations for FY 2020 – FY 2024, by Wage Level



Source: USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. Merged with LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2018 – FY 2024. Note that SOC 6 digits are 2018 SOC classification.

Most of the petitions are filed with the same top 6-digit SOC codes across wage levels, with several exceptions. The final rule projects that almost half of the registrations for beneficiaries with a proffered wage that corresponds to a wage level I typically associated with entry-level workers will not be selected but registrations for beneficiaries with a proffered wage that corresponds to a higher wage level typically associated with more experienced workers will be selected in the same occupational categories.[125]

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represents the upper bound of estimated impact. However, because DHS does not have a way to estimate how many registrants would pay a proffered wage that corresponds to a higher wage level than the wage level required on the LCA, DHS uses the wage level selected on the LCA as a proxy for the wage level that is likely to be selected on the registration.

[124] See the previous footnote.

[125] Wage level I, II, III, and IV are defined as entry, qualified, experienced, and fully competent, respectively. DOL, ETA, Prevailing Wage Determination Policy Guidance: Nonagricultural Immigration Programs (last modified Nov. 2009), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf.

However, for certain occupations that have historically included only petitions for level I positions, such as Civil Engineers or Architects, except Landscape and Naval, the final rule does not project a significant increase in the selection of higher wage level workers in the same occupations.[126] Instead, the final rule projects increased distribution in occupations that have historically included petitions for higher wage level positions, such as Computer Occupations (all other), Electronics Engineers (except computer), Materials Engineers, or Engineers, All Other shown in Figure 2 and Figure 3. Therefore, DHS expects that the final rule will have an impact on the occupational distribution of H-1B workers.

A prospective petitioner (employer) may respond to the final rule in several ways. An employer could choose to increase the proffered wage to increase the probability of getting its H-1B registration selected. If employers choose to increase the proffered wage, or if employers were already offering a salary corresponding to a higher wage level, then this final rule might result in more registrations (or petitions, if registration is suspended) with a proffered wage that will correspond to wage level II, III, or IV, and fewer registrations corresponding to wage level I. It is also possible that an employer may choose not to make any changes in response to this rule, especially those employers that were already offering a salary corresponding to a higher wage level.

Other prospective employers may leave the position vacant if the alien beneficiary they registered is not selected, because they will not be able to justify raising the proffered wage to an amount that corresponds to a higher wage level and that will have improved their chance of selection. These employers might be unable to fill their

[126] However, it is possible that such prospective employers already pay a wage that corresponds to a higher wage level such that the chance of selection would not be reduced under the final rule, or that they would choose to pay a wage that corresponds to a higher wage level in order to increase the chance of selection for workers in level I positions.

position(s). And other employers might incur additional costs to find available replacement workers, such as by seeking out and/or training other workers.[127]

The effects of this rulemaking on any given employer will depend in part on the interaction of a number of complex variables that constantly are in flux, including national, state, and local labor market conditions, economic and business factors, the type of occupations and skills involved, and the substitutability between H-1B workers and U.S. workers.

DHS acknowledges costs incurred associated with loss of output from not being able to employ H-1B beneficiaries. Costs incurred associated with loss of potential output will be discussed as a transfer later in this section.

Table 15 shows the annual quantified economic impacts of the final rule. To estimate the economic impact of the final rule, DHS uses the average annual salary of H-1B cap-subject workers by wage level in FY 2024. In Table 15, the average annual salary for wage level I is $85,006, for wage level II is $103,071, for wage level III is $131,454, and for wage level IV is $162,528. The estimated total annual salary paid to H-1B cap-subject workers under the current selection process in FY 2024 dollars will be $8,862,595,799. However, under the weighted selection process, the estimated total annual salary paid to initial H-1B cap-subject workers will increase because there will be fewer wage level I workers and more wage level II, III, and IV workers. DHS estimates that the total annual salaries paid to H-1B workers will increase by $502,080,486 to $9,364,676,285. The $502 million increase is the estimated quantifiable economic benefit resulting from the final rule in the first year.

Table 15. Annual Distributional Impacts by Wage Levels

[127] DHS has not quantified this cost but notes that in the analysis accompanying the 2021 final rule, DHS "assume[d] that an entity whose H-1B petition is denied will incur an average cost of $4,398 per worker (in 2019 dollars) . . . to search for and hire a U.S. worker in place of an H-1B worker during the period of this economic analysis. If petitioners cannot find suitable replacements for the labor H-1B cap-subject beneficiaries would have provided if selected and, ultimately, granted H-1B status, this final rule primarily will be a cost to these petitioners through lost productivity and profits." 86 FR 1676, 1724 (Jan. 8, 2021).

	Level I	Level II	Level III	Level IV	Total
Estimated Annual H-1B Cap-Subject Visa Granted (Random)					
	23,830	46,968	10,052	4,150	85,000
Estimated Annual H-1B Cap-Subject Visa Granted (Weighted)					
	13,731	49,342	14,548	7,379	85,000
Difference in Estimated Annual H-1B Cap-Subject Visa Granted between Random and Weighted Selection					
	-10,099	2,373	4,496	3,230	0
Average Annual Salary of H-1B Cap-Subject Workers					
	$85,006	$103,071	$131,454	$162,528	
Estimated Total Annual Salary Paid to H-1B Cap-Subject Workers (Random)*					
	$2,025,655,768	$4,841,088,469	$1,321,409,280	$674,442,282	$8,862,595,799
Estimated Total Annual Salary Paid to H-1B Cap-Subject Workers (Weighted)*					
	$1,167,185,470	$5,085,685,684	$1,912,441,622	$1,199,363,508	$9,364,676,285
Benefits**	-$858,470,298	$244,597,215	$591,032,342	$524,921,226	**$502,080,486**
Transfers***					**$858,470,298**

Source: USCIS analysis. USCIS OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17265. Merged with LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2018 – FY 2024. DOL data downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance.

Estimated Total Annual Salary Paid to H-1B Cap-Subject Workers*: Multiplying Estimated Annual H-1B Cap-Subject Petition Approved by Average Annual Salary of H-1B Cap-Subject Workers for Random or Weighted. The numbers may vary slightly due to rounding.
Benefit**: Difference between estimated total annual salary paid to H-1B cap-subject workers for weighted and random selection process. $502,080,486 = $9,364,676,285 − $8,862,595,799. The aggregate benefits include the distributional impacts at each wage level.

Transfer***: Total annual salary paid to level I workers under random selection process who no longer work. This annual salary is transferred to level II, level III, and level IV workers for part of their annual salary under weighted selection process. $858,470,298=$2,025,655,768- $1,167,185,470.

The maximum initial granted period of stay for H-1B status is three years, with extensions for up to three years thereafter. An H-1B worker is generally limited to a six-year period of authorized stay, unless eligible for an exemption from the general 6-year period of stay limitation under 8 CFR 214.2(h)(13)(iii)(D) and (E). Based on a DHS analysis of FY2017 through FY2019 cohort of initial H-1B cap-subject approvals, the average total validity period, including extensions, is 5.2 years among beneficiaries whose extension basis for classification is “Continuation of previously approved

employment without change with the same employer."[128] DHS recognizes that H-1B extensions vary across petitions and workers. For the purpose of this analysis, DHS believes it is appropriate to assume the average H-1B cap-subject worker's duration of H-1B status is 5 years to estimate the benefits and transfers of the final rule.

The estimated economic benefits in the first year when the new registration selection process is in effect are approximately $502 million. Assuming H-1B cap-subject workers work an average of five years in the United States, these benefits will accrue for four additional years. The benefits in the second year will be about $1,004 million, which includes the initial $502 million in benefits accrued from new H-1B cap-subject workers with higher wages in the first year plus an estimated $502 million in benefits accrued from new H-1B cap-subject workers in the second year. Similarly, the benefits in years 3 and 4 are $1,506 million and $2,008 million, respectively, reflecting granted H-1B cap-subject workers granted in the current year and the prior two years (year 3) and in the current year and the prior three years (year 4). From year 5 onward, accrued five-year benefits are $2,510 million each year.

In addition to the $502 million in first-year benefits discussed previously, the $9.4 billion in first-year H-1B wages resulting from the final rule also contains a transfer from wage level I workers to wage level II, III, and IV workers. When a regulation generates a gain for one group and an equal-dollar-value loss for another group, the regulation is said to cause a transfer from the latter group to the former.[129] When H-1B allocations change from wage level I workers to higher wage level workers, the benefits of the H-1B classification are transferred from wage level I workers to higher wage level workers. For example, if a wage level IV worker whose annual salary is $160,000 is selected instead of a wage level I worker whose annual salary is $85,000, then $85,000 of benefits are

[128] USCIS, OPQ, CLAIMS3 and ELIS queried 10/2025, TRK #18875.
[129] OMB, Circular A-4 (Sept. 17, 2003), trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.

transferred from the wage level I worker to the wage level IV worker (the difference of $75,000 is a benefit to the level IV worker). DHS estimates that transfers from wage level I workers to other wage level workers will be $858 million in the first year under the final rule.

Assuming H-1B cap-subject workers work an average of five years in H-1B nonimmigrant status, transfers will also accrue for four additional years. The transfers in the second year will be approximately $1,717 million and in years 3 and 4 the transfers will be about $2,575 million and $3,434 million, respectively. In years 5 and beyond, the transfers will be approximately $4,292 million. These transfers are the costs incurred associated with loss of output from not being able to employ the labor of wage level I H-1B workers for the employers who registered H-1B workers at wage level I. Whereas the transfers are a benefit to the employers who registered H-1B workers at higher wage levels because they will expect gains in output by being able to employ H-1B workers. To the extent that benefits and transfers are estimated using LCA data, and proffered wages may exceed the wage levels indicated on the LCA, the projections in this discussion will represent the upper bound of the impact of the final rule.

There is an unquantifiable transfer from the employers who will lose an opportunity to employ wage level I H-1B workers to the employers who will gain an opportunity to employ higher wage level workers in terms of output produced. When an employer gets into an economic activity of hiring workers and producing output, they will expect the output to at least recover the labor cost of hiring workers. DHS is not able to quantify this producer surplus. According to this analysis, half of the employers who hire H-1B workers at wage level I will lose the opportunity to gain the surplus under the final rule. This gained surplus will be transferred to the employers who will have an opportunity to hire workers at higher wage levels.

By engaging in a wage-level-based weighting of registrations for unique beneficiaries, DHS will increase the chances that initial H-1B visas and status grants will go to higher-skilled or higher-paid beneficiaries. Facilitating the admission of higher-skilled workers "will benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market,"[130] consistent with the goals of the H-1B program.

c. Required Information on Petition

Unless registration is suspended, a petitioner may file an H-1B petition for a beneficiary who may be counted under section 214(g)(1)(A) of the Act, or eligible for exemption under section 214(g)(5)(C) of the Act, only if the petition is based on a valid selected registration. *See* 8 CFR 214.2(h)(8)(iii)(A)(*1*). An H-1B cap-subject petition filed on behalf of a beneficiary will be required to contain and be supported by the same identifying information and position information, including SOC code, provided in the selected registration. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). Such petition will be required to include a proffered wage that equals or exceeds the prevailing wage for the corresponding OEWS wage level in the registration for the SOC code in the area(s) of intended employment as indicated on the LCA used to support the petition. *Id*. Petitioners will be required to submit evidence of the basis of the wage level selected on the registration as of the date that the registration underlying the petition was submitted. *Id*.

This change will add additional questions for petitioners for both the Form I-129 and the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement (paper and online e-file). DHS estimates that these additional questions will increase the time burden by 15 minutes for each petition (0.25 hours) for all H-1B petitions, not just H-1B

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[130] *See* Muzaffar Chishti & Stephen Yale-Loehr, Migration Policy Institute, The Immigration Act of 1990: Unfinished Business a Quarter-Century Later (July 2016), https://www.migrationpolicy.org/sites/default/files/publications/1990-Act_2016_FINAL.pdf ("Sponsors of [the Immigration Act of 1990, which created the H–1B program as it exists today,] believed that facilitating the admission of higher-skilled immigrants would benefit the economy and increase the United States' competitive edge in attracting the 'best and the brightest' in the global labor market.").

cap-subject petitions, because these questions will be on the forms completed and submitted by all H-1B petitioners. The change will offer qualitative benefits. Specifically, submission of additional information on the petition form (including wage level information and the SOC code), and evidence of the basis of the wage level selected will allow USCIS to further improve the integrity of the H-1B cap selection and adjudication processes.

Based on a 5-year annual average, between FY 2020 and FY 2024 from Table 16, DHS estimates the annual average H-1B petition receipts are 422,759. The 5-year annual average of Form I-129 H-1B receipts with Form G-28 is 336,023.

Table 16. H-1B Petitions Received, FY 2020 through FY 2024

	H-1B Petitions Received	H-1B Petition Received with Form G-28	Percent with Form G-28
2020	427,289	337,096	79%
2021	398,281	319,147	80%
2022	474,315	385,473	81%
2023	386,597	304,568	79%
2024	427,315	333,829	78%
5-year Total	**2,113,797**	**1,680,113**	**79%**
5-year Annual Average	**422,759**	**336,023**	**79%**

Source: USCIS OPQ, CLAIMS3, ELIS, PAER #18821, 9/2025.
Note that the figures have been updated to reflect the most recent data source and may differ immaterially from those in the NPRM.

DHS does not know the exact number of petitioners who will choose an in-house or an outsourced lawyer but assumes it may be a 50/50 split and therefore provides an average. Table 17 shows the additional annual average cost for a lawyer to complete the petition on behalf of a petitioner. The additional opportunity cost of time for completing and submitting an H-1B petition using an attorney or other representative is estimated to range from $10,334,387 to $17,817,620 with an average of $14,076,004.

Table 17. Additional Average Opportunity Costs of Time for Submitting an H-1B Petition with an Attorney or Other Representative

	Population Submitting with a Lawyer	**Time Burden to Complete H-1B Petition (Hours)**	**Cost of Time**	**Total Current Opportunity Cost**

	A	B	C	D=(A×B×C)
In-house lawyer	336,023	0.25	$123.02	$10,334,387
Outsourced lawyer	336,023	0.25	$212.10	$17,817,620
Average				**$14,076,004**
Source: USCIS analysis.				

To estimate the current remaining opportunity cost of time for an HR specialist submitting an H-1B petition without a lawyer, DHS applies the estimated increased public reporting time burden 15 minutes (0.25 hours) to the compensation rate of an HR specialist. Table 18 estimates the current total annual opportunity cost of time to HR specialists completing and submitting an H-1B petition will be approximately $1,149,903.

Table 18. Additional Average Opportunity Costs of Time for Submitting an H-1B Petition, without an Attorney or Accredited Representative

	Population	**Time Burden to Complete H-1B Petition (Hours)**	**HR Specialist's Opportunity Cost of Time**	**Total Opportunity Cost of Time**
	A	B	C	D=(A×B×C)
Estimate of H-1B Petitions	86,736	0.25	$53.03	**$1,149,903**
Source: USCIS analysis. Note that 86,736, the number of petitions filed by an HR specialist, is 422,759, the total number of petitions, minus 336,023, the number of petitions filed with a Form G-28.				

DHS estimates the additional total annual cost for attorneys and HR specialists to complete and submit an H-1B petition will be $15,225,907 as shown in Table 19.

Table 19. Total Additional Costs to Complete H-1B Petition

Additional Average Opportunity Cost of Time for Lawyers to Complete an H-1B Petition	$14,076,004
Additional Average Opportunity Cost of Time for HR Specialist to Complete an H-1B Petition	$1,149,903
Total	**$15,225,907**
Source: USCIS analysis.	

d. Process Integrity

DHS is revising 8 CFR 214.2(h)(10)(ii) to clarify that a valid registration must represent a bona fide job offer. The final rule will also require an H-1B petition filed after registration selection to contain and be supported by the same identifying information and

position information, including SOC code, provided in the selected registration and indicated on the LCA used to support the petition. *See* new 8 CFR 214.2(h)(8)(iii)(D)(*1*). Such petition must also include a proffered wage that equals or exceeds the prevailing wage for the corresponding OEWS wage level in the registration for the SOC code in the area(s) of intended employment as described in 8 CFR 214.2(h)(8)(iii)(A)(*4*)(*i*). *Id.*

The final rule will allow USCIS to deny a subsequent new or amended petition filed by the petitioner, or a related entity, on behalf of the same beneficiary if USCIS were to determine that the filing of the new or amended petition was part of the petitioner's attempt to unfairly increase the odds of selection during the registration (or petition, if applicable) selection process, such as by reducing the proffered wage to an amount that will be equivalent to a lower wage level than that indicated on the original registration or petition. *See* new 8 CFR 214.2(h)(10)(iii). In this context, attempting to "unfairly increase the odds of selection" generally refers to attempting to derive the benefit from the increased chance of selection associated with a higher corresponding wage level without having a bona fide job offer at the corresponding wage level attested to during registration. Additionally, a new or amended petition containing a proffered wage equivalent to a lower wage level than that indicated on the original registration or petition may reveal an attempt to "unfairly increase the odds of selection" or indicate that the registration or petition did not in fact represent a bona fide job offer, which will violate the requirement that a valid registration represents a bona fide job offer.

As is currently required, the entity submitting a registration or petition will be required to certify the veracity of the contents of such submissions. DHS estimates that the final rule could lead to an increase in the number of denials or revocations of H-1B petitions. DHS cannot quantify this impact. The changes in process integrity will lead to improved program integrity for USCIS.

5. Alternatives Considered

DHS considered proposing the methodology from the 2020 H-1B Selection NPRM (85 FR 69236 (Nov. 2, 2020)) and the 2021 H-1B Selection Final Rule (86 FR 1676 (Jan. 8, 2021)). Under the 2021 H-1B Selection Final Rule, USCIS would have ranked and selected registrations generally based on the highest prevailing wage level that the proffered wage equals or exceeds for the relevant SOC code and area(s) of intended employment. The rule was expected to result in the likelihood that registrations for level I wages would not be selected, as well as a reduced likelihood that registrations for level II would be selected. As discussed earlier in this preamble, DHS believes the selection process finalized under the 2021 H-1B Selection Final Rule was a reasonable approach to facilitate the admission of higher-skilled or higher-paid workers. However, DHS believes that rule did not capture the optimal approach because it effectively left little or no opportunity for the selection of lower wage level or entry level workers, some of whom may still be highly skilled. DHS also considered various alternatives suggested by commenters, such as weighted selection by various factors (occupational preferences, industry preferences, preferences for certain educational degrees, etc.), but declined to adopt those suggested alternatives for the reasons previously explained in the comment responses. Accordingly, DHS is instead finalizing the weighted selection process as proposed in the NPRM to better ensure that initial H-1B visas and status grants would more likely go to the highest skilled or highest paid beneficiaries, while not effectively precluding those at lower wage levels.

6. Total Quantified Costs, Benefits, and Transfers of Regulatory Changes

In this section, DHS presents the total annual costs, benefits, and transfers annualized over a 10-year period of analysis. DHS summarizes the annual costs, benefits, and transfers (undiscounted) of this final rule in Table 20. DHS estimates the total annual cost will be $30,362,120 for FY 2026 through FY 2035. In Table 20, DHS estimates the

total annual benefit will be $502,080,486 in FY2026, $1,004,160,972 in FY2027, $1,506,241,458 in FY2028, $2,008,321,944 in FY2029, and $2,510,402,430 in each year from FY2030 through FY2035. DHS estimates annual transfers (undiscounted) will be $858,470,298 in FY2026, $1,716,940,595 in FY2027, $2,575,410,893 in FY2028, $3,433,881,191 in FY2029, and $4,292,351,489 in each year from FY2030 through FY2035. The net benefit will be calculated by subtracting the cost from the benefit each year. 10-Year undiscounted total net benefits to the public of $19,779,598,238 are the total benefits minus total costs.[131]

Table 20. Summary of Costs, Benefits, and Transfers for FY 2026 through FY 2035

Description	Costs	Benefits	Net Benefits	Transfers
Required Information on Registration and Petition	$15,136,213			
Weighting and Selecting Registrations		$502,080,486		$858,470,298
H-1B Cap-Subject Petition Filing Following Registration	$15,225,907			
First Year Total (FY 2026)	**$30,362,120**	**$502,080,486**	**$471,718,366**	**$858,470,298**
FY2027	$30,362,120	$1,004,160,972	$973,798,852	$1,716,940,595
FY2028	$30,362,120	$1,506,241,458	$1,475,879,338	$2,575,410,893
FY2029	$30,362,120	$2,008,321,944	$1,977,959,824	$3,433,881,191
FY2030-FY2035	$30,362,120	$2,510,402,430	$2,480,040,310	$4,292,351,489
10 Year Total	**$303,621,200**	**$20,083,219,438**	**$19,779,598,238**	**$34,338,811,909**

Source: USCIS analysis. Note that costs are measured in FY 2023 dollars using BLS wages, but benefits and transfers are measured in average of FY 2023 and FY 2024 dollars using filed LCA wages.

Table 21 illustrates that over a 10-year period of analysis of the final rule, DHS estimates that annualized net benefits will be $1,924,995,394 discounted at 3 percent and $1,854,251,990 discounted at 7 percent. Table 21 also shows that over a 10-year period

[131] Calculations: $19,779,598,238 Total Net Benefits for 10-year total (FY2026- FY2035) = $20,083,219,438 Total Benefits − $303,621,200 Total Costs.

of analysis of the final rule, that annualized transfers will be $3,343,321,229 discounted at 3 percent and $3,222,362,314 discounted at 7 percent.

Table 21. Discounted Net Benefits Over a 10-Year Period of Analysis						
	Total Estimated Benefits		**Total Estimated Net Benefits**		**Total Estimated Transfers**	
10-Year Undiscounted	**$20,083,219,438**		**$19,779,598,238**		**$34,338,811,909**	
Fiscal Year	Discounted at 3 percent	Discounted at 7 percent	Discounted at 3 percent	Discounted at 7 percent	Discounted at 3 percent	Discounted at 7 percent
2026	$487,456,782	$469,234,099	$457,978,996	$440,858,286	$833,466,308	$802,308,689
2027	$946,518,024	$877,073,082	$917,898,814	$850,553,631	$1,618,381,181	$1,499,642,410
2028	$1,378,424,307	$1,229,541,704	$1,350,638,666	$1,204,757,170	$2,356,865,798	$2,102,302,444
2029	$1,784,368,035	$1,532,139,195	$1,757,391,685	$1,508,976,079	$3,050,958,962	$2,619,691,519
2030	$2,165,495,188	$1,789,882,237	$2,139,304,557	$1,768,234,465	$3,702,620,100	$3,060,387,289
2031	$2,102,422,513	$1,672,787,138	$2,076,994,715	$1,652,555,575	$3,594,776,796	$2,860,175,036
2032	$2,041,186,906	$1,563,352,465	$2,016,499,724	$1,544,444,463	$3,490,074,559	$2,673,060,782
2033	$1,981,734,860	$1,461,077,070	$1,957,766,722	$1,443,406,040	$3,388,421,902	$2,498,187,646
2034	$1,924,014,427	$1,365,492,589	$1,900,744,390	$1,348,977,607	$3,289,730,002	$2,334,754,810
2035	$1,867,975,172	$1,276,161,298	$1,845,382,903	$1,260,726,736	$3,193,912,623	$2,182,013,841
10-year Total	**$16,679,596,215**	**$13,236,740,878**	**$16,420,601,172**	**$13,023,490,053**	**$28,519,208,233**	**$22,632,524,467**
Annualized	**$1,955,357,514**	**$1,884,614,110**	**$1,924,995,394**	**$1,854,251,990**	**$3,343,321,229**	**$3,222,362,314**
Source: USCIS analysis. 10-Year Undiscounted Total Costs will be $303,621,200 and estimated annualized costs will be $30,362,120 discounted both at 3 percent and 7 percent.						

7. Costs to the Federal Government

DHS is revising the regulations governing the selection of registrations for unique beneficiaries submitted by prospective petitioners (also referred to as registrants) seeking to file H-1B cap-subject petitions (or the selection of petitions, if the registration process were suspended). This final rule will require updates to USCIS IT systems and additional time spent by USCIS to review newly required information during the adjudication of the petition and maintain program integrity.

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services by DHS, including administrative costs and services provided without charge to certain applicants and petitioners.[132] DHS establishes USCIS fees according to the estimated cost of

[132] *See* INA sec. 286(m), 8 U.S.C. 1356(m).

adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs, such as clerical, officer, and managerial salaries and benefits, plus an amount to recover unassigned overhead (e.g., facility rent, IT equipment and systems) and immigration benefits provided without a fee charge. These costs will be captured in the fees collected for the benefit request from petitioners. DHS established the current fee for H-1B registrations and petitions in its FY2024 fee rule based on empirical cost estimates. DHS notes that if the final rule increases USCIS' costs, then the fee schedule adjustment will be determined at USCIS' next comprehensive biennial fee review.

B. Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980 (RFA), Pub. L. 96–354, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 5 U.S.C. 601 through 612, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.[133] An "individual" is not considered a small entity and costs to an individual are not considered a small entity impact for RFA purposes. In addition, the courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.[134]

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[133] A small business is defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

[134] *See* U.S. Small Business Administration (SBA), A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, at 22 (Aug. 2017), https://advocacy.sba.gov/wp-content/uploads/2019/06/How-to-Comply-with-the-RFA.pdf. In *Aeronautical Repair Station Association, Inc. v. FAA*, the D.C. Circuit made clear that an entity is not "subject to" a regulation unless the regulation "imposes responsibilities directly on" the entity. 494 F.3d 161, 177 (D.C. Cir. 2007); *see also Mid-Tex Elec. Coop., Inc. v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (holding that the RFA's requirements apply only to "small entities that would be directly regulated" by a challenged rule).

Consequently, indirect impacts from a rule on a small entity are not considered as costs for RFA purposes. The Final Regulatory Flexibility Analysis for this final rule focuses on the population of employers who submit H-1B petitions (Form I-129, Petition for a Nonimmigrant Worker) and H-1B registrations.

DHS believes that the changes in this final rule will have a significant economic impact on a substantial number of small entities that file H-1B cap-subject petitions.

1. Final Regulatory Flexibility Analysis

a. A Statement of Need for, and Objectives of, This Final Rule

DHS's objectives and legal authority for this final rule are discussed earlier in the preamble. DHS is amending its regulations governing H-1B specialty occupation workers. The purpose of the changes is to better ensure that initial H-1B visas or grants of status are more likely to be awarded to petitioners seeking to employ higher-paid and higher-skilled beneficiaries, while not effectively precluding those at lower wage levels. DHS believes these changes will disincentivize use of the H-1B program to fill relatively lower paid, lower skilled positions, better aligning the H-1B program with congressional intent.

b. A Statement of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of Assessment of Any Changes Made in the Proposed Rule as a Result of Such Comments

Comment: Some commenters stated that the Regulatory Flexibility Analysis (RFA) conducted by DHS is both flawed and incomplete and makes it difficult to assess the rule's effects. Some commenters stated that while DHS acknowledged that a substantial majority of H-1B petitioning entities are small businesses and that a significant portion would be economically affected, the analysis does not examine the distributional effects across industry sectors, geographic regions, and business models reliant on entry- or mid-level professional workers. Furthermore, the commenters stated

that the analysis did not adequately quantify the magnitude and scope of these impacts, nor did it present alternative frameworks as required by statute. Another commenter stated that the IRFA failed to adequately quantify the impact on small entities in terms of lost growth opportunities, higher recruitment and training costs, and increased turnover for small businesses.

Further, another commenter stated that despite acknowledging the negative impacts for small businesses, DHS did not propose exemptions, transitional relief, or offsetting mechanisms that 5 U.S.C. 603 requires for small entities. Some commenters recommended what analyses would be needed to ensure a rigorous cost-benefit analysis. A commenter stated that the analysis should incorporate empirical data by industry and firm size, model cumulative costs and opportunity losses, and explicitly consider flexible approaches that preserve program integrity while mitigating disproportionate harm to small U.S. employers. Another commenter stated that DHS should "prepare a supplemental regulatory analysis under E.O. 12866 and OMB Circular A-4 that: (a) quantifies the distributional effects and transfers produced by weighting across firm sizes, regions, and occupations; (b) rigorously evaluates reasonable alternatives (including keeping a beneficiary-centric random selection, partial weighting, geographic/occupation-adjusted weighting, and small-entity safeguards); and (c) explains why the chosen approach best meets the stated objectives at least cost." Furthermore, the commenter suggested the need for an IRFA, including a robust analysis of significant alternatives to minimize small entity impacts. Finally, a commenter stated that the DHS analysis should have accounted for other major costs, such as reduced competitiveness for U.S. businesses in terms of lost market share and innovation, weakened research institutions, the strategic advantage gained by competitor nations that attract the excluded talent, inefficiencies from wage inflation, barriers to entrepreneurship for small businesses, and reduced innovation and business formation.

Response: DHS relied on the best available empirical data and analyzed potential effects on small entities and industries through the RIA and the IRFA. In these analyses, DHS quantified a projected decrease of 10,099 level I workers under the new selection system and found that 61 percent of petitions filed by small entities were at wage level I. DHS estimated the value of lost output using the average wage of affected workers ($85,006) and discussed additional costs to identify or train replacement workers (estimated at $4,398).

The RIA quantifies transfers and evaluates distributional effects across SOC codes, and the IRFA presents impacts by firm size. With respect to geography, the weighted selection process generally relies on prevailing wage levels by occupation and 5. area of intended employment, which normalizes for local labor markets and mitigates any systematic advantage for higher-cost regions.

DHS considered reasonable alternatives against the rule's objectives—increasing the chance of selection for higher-paid, higher skilled aliens while maintaining program integrity and administrative efficiency—and explained why other options were not adopted (see 5. Alternatives Considered). Retaining a purely random selection process (with or without additional anti-fraud measures) does not advance the policy allocation objective and preserves incentives for mass registration at lower wage levels. Anti-fraud tools are complementary to, not substitutes for, an allocation mechanism. Partial weighting does not materially improve the status quo, while very steep weighting would overly favor high-wage cases and likely crowd out lower wage levels entirely.[135] Geographic- or occupation-adjusted weighting is unnecessary because the weighted selection process implemented by this final rule will normalize by local labor markets via prevailing wage levels for the occupation and area of intended employment. Adding

[135] The commenter referenced "partial weighting" whereby minimally acceptable weights might apply to only a portion of locations or occupations to correct for differences within specific subgroups, whereas "steep weighting" refers to assigning relatively larger weights to correct for overall differences.

explicit regional or occupational carveouts would introduce unnecessary complexity, subjectivity, and greater susceptibility to gaming. Any alternative that provides preferential weighting—including for small entities—would undermine the rule's objective to efficiently and effectively administer a cap selection process that generally favors allocation to higher-skilled and higher-paid workers across industries, occupations, and geographic areas.

DHS acknowledges that the rule is likely to have a significant economic impact on a substantial number of small entities. Under the new rule, employers or industries with higher share of wage level III or IV may see improved selection outcomes. In contrast, those with a higher share of wage level I may experience lower relative selection outcomes. However, DHS does not believe it would be fair, effective, and administratively efficient or practical within the H-1B cap selection process to create carveouts for specific employers, industries, or occupations. Accordingly, DHS is finalizing the weighted cap selection process as proposed to ensure that all employers—including small entities and those in essential occupations—retain meaningful opportunities for selection.

DHS appreciates the commenter's concerns regarding the potential negative impact U.S. competitiveness, innovation, research, entrepreneurship, and business growth on small businesses and their role in creating barriers to small business entrepreneurship. However, the RFA does not require agencies to assess indirect or secondary effects, such as broader economic impacts or downstream consequences on the economy as a whole. The IRFA and Final Regulatory Flexibility Analysis (FRFA) prepared for this rule focus on the direct economic impacts on small entities that are subject to the proposed selection process. While DHS recognizes the importance of small businesses to the U.S. economy and innovation, the broader economic considerations raised by the commenter are not part of the RFA's requirements.

Comment: Some commenters expressed concerns associated with the Regulatory Flexibility Act portion of the proposed rule since the proposed weighted selection process would significantly disadvantage small entities. A commenter referenced DHS data that stated that 44 percent of cap-subject petitions filed by small entities fall within the level I wage category, while only 3 percent are at level IV; in contrast, larger entities have a lower proportion at level I (25 percent) and a higher proportion at level IV (6 percent). This disparity means the proposed process has an outsized, negative impact on small entities and rural regions, reducing their ability to secure skilled workers through the H-1B program. Another commenter referenced DHS data that showed that 76 percent of H-1B petitioners are small business owners, and text in the preamble that stated that "2,665 small businesses would experience a cost increase that is greater than 5 percent of its revenue[,]" and that "5,193 small entities would experience a cost increase that is greater than 1 percent of its revenue." Another commenter referenced additional data related to the fact that small entities are much more likely to submit H-1B petitions at lower wage levels (levels I and II) compared to larger firms; citing that 61 percent of wage level I petitions in FY2024 came from small businesses, compared to 47 percent for all cap-subject petitions. Under the proposed rule, the share of H-1B visas awarded to small businesses would fall from almost 68 percent in recent years to 65 percent, which would have a negative impact on small businesses and the competitiveness of the U.S. economy overall.

Response: DHS acknowledges the commenters' concern regarding impacts on small entities. However, any alternative process that provides a different, preferential weighting scheme especially for small entities would undermine the overall utility of this rule, which is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens. This rule will benefit those small entities that are applying for relatively higher-wage employees, as they will have a greater chance of their employees being

selected compared to the current random selection process. If a small-sized entity is unable to pay a beneficiary a wage that corresponds to a higher wage level for a greater chance of selection, they could try to find a substitute U.S. worker. DHS selected a nationally consistent approach that advances program integrity and administrability while ensuring all employers, including small entities and those in rural regions, retain meaningful opportunities for selection under the same criteria.

c. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Rule, and a Detailed Statement of Any Change Made to the Final Rule as a Result of the Comments

The Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to this rule.

d. A Description of and an Estimate of the Number of Small Entities to Which This Final Rule Will Apply or an Explanation of Why No Such Estimate Is Available

For this analysis, DHS used internal data for employers filing H-1B cap-subject petitions for FY 2024 merged with LCA data.[136] DHS merged the internal employer data with the U.S. Small Business Administration (SBA)'s table of size standards[137] to identify small entities and with LCA data[138] to identify wage levels for the petitions.

To determine whether an entity is small for purposes of the RFA, DHS first identified the entity's NAICS code and then used SBA guidelines to classify the revenue or employee count threshold for each entity. Some entities were classified as small based

[136] USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17293. LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2024. DOL data downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance (last visited Nov. 24, 2025).
[137] SBA, Table of Size Standards (Mar. 17, 2023), https://www.sba.gov/document/support-table-size-standards.
[138] DOL, Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2018 – FY 2024. Downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance (last visited Nov. 24, 2025).

on their annual revenue, and some by their number of employees. Approximately 20 percent of petitions were not matched using SBA's table of size standards. These unmatched employers were considered small entities if their number of employees was less than 500.

Using FY 2024 internal data on actual filings of H-1B cap-subject petitions, there were 94,873 petitions filed. DHS recognized 23,452 unique entities and was able to classify 22,453 as either small entities or not small entities. DHS determined that 76 percent of the total 22,453 unique entities that filed Form I-129 under the H-1B classification and cap-subject were small entities. *See* Table 22. The estimated annual number of small entities impacted by this final rule is 17,069.

Table 22. Number of Small Entities Filing H-1B Cap-Subject Petitions, FY 2024

Unique Entities	Number of Small Entities	Proportion of Population (%)
22,453	17,069	76%
Source: USCIS OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17293.		

Table 23 shows the Top 10 NAICS Code for small entities filing H-1B cap-subject petitions for FY2024. The table shows the size standards for each NAICS code in millions of dollars or by number of employees. Of the top 10 NAICS codes three are related to the computer industry, and two are related to manufacturing. The remaining five top industries are engineering services, offices of lawyers, research and development in biotechnology, administrative management and general management consulting services, computing infrastructure providers, data processing, web hosting, and related services.

Table 23. Top 10 NAICS Code for Small Entities Filing H-1B Cap-Subject Petitions, FY2024

NAICS Code	NAICS Code Description	Size Standards in Millions of Dollars	Size Standards in Number of Employees
541511	Custom Computer Programming Services	$34.0	
541512	Computer Systems Design Services	$34.0	
541330	Engineering Services	$25.5	
541519	Other Computer Related Services	$34.0	
334413	Semiconductor and Related Device Manufacturing		1,250

334111	Electronic Computer Manufacturing		1,250
541110	Offices of Lawyers	$15.5	
541714	Research and Development in Biotechnology (except Nanobiotechnology)		1,000
541611	Administrative Management and General Management Consulting Services	$24.5	
518210	Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services	$40.0	

Table 24 shows the number of H-1B cap-subject petitions filed by small entities for FY 2024 by wage level. Out of 94,873 H-1B petitions filed, DHS was able to classify the petitioners of 82,204 H-1B petitions as either small entities or not small entities and identify the number of petitions filed by such petitioners by wage level, as well as the percentage of petitions filed at each wage level by small entities. As shown in Table 24, more small entities filed petitions at wage levels I and II (61 percent and 47 percent) than at wage levels III and IV (25 percent and 29 percent).

Table 24. Number of H-1B Cap-Subject Petitions filed by Small Entities for FY 2024 by Wage Level

	Level I	Level II	Level III	Level IV	Unknown	Total
Small Entity	16,904	18,056	2,279	1,136	410	38,785
Not Small Entity	10,734	20,075	6,814	2,762	3,034	43,419
Total	27,638	38,131	9,093	3,898	3,444	82,204
% of Small	61%	47%	25%	29%	12%	47%

Source: USCIS OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17293. Merged with OPQ TRK #17265 and LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2024.

The quantifiable economic impact, represented as a percentage, for each small entity is the total quantified costs of the changes divided by the entity's sales revenue. There are two sources of quantifiable costs. One is the opportunity cost of time to submit H-1B registrations or to file H-1B petitions, or both. This cost is relatively small, so it is not considered in this analysis. The other cost is the loss of output for employers who registered with wage level I but are not selected due to the change in the selection process by the final rule and thus are unable to file an H-1B petition. DHS estimates the loss of output as a transfer, $858,470,298, from the lost wages of wage level I workers to those

higher wage level workers. The loss of output from the loss of labor is considered as a cost to employers because less output means less profit. The loss of output from the loss of labor is estimated using the wage of the lost labor, which is the wage level I average annual salary, $85,006 (Table 15). Therefore, DHS projects in the final rule that some small entities who filed H-1B petitions at wage level I will incur costs of approximately $85,006.[139] This assumes, solely for purposes of the RFA, that the employer will be unable to otherwise fill the position or perform the work. Internal data show that there are 9,428 unique small entities that filed petitions at wage level I in FY2024.[140]

DHS divides $85,006 by the revenue for each entity then finds that 5,193 small entities will experience a cost increase that is greater than 1 percent of its revenue and 2,665 will experience a cost increase that is greater than 5 percent of its revenue.[141] DHS considers an impact greater than 1 percent of a small entity's revenue as significant for purposes of the RFA. As such, DHS estimates that the final rule will result in a significant impact on 5,193 small entities, or 30 percent of the 17,069 small entities affected by the final rule. DHS considers 30 percent as a substantial number. This final rule will also benefit small entities that are applying for higher-earning employees as they will have a greater chance of their employees being selected compared to the current purely random selection process.

Based on this analysis, DHS believes that the changes in this final rule will have a significant economic impact on a substantial number of small entities that file H-1B cap-subject petitions.

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[139] Small entities that register with wage levels II, III, and IV would likely benefit because the final rule increases the probability that their registrations will be selected and that they may be authorized to employ the alien beneficiary named in their registration.

[140] USCIS, OPQ, CLAIMS3 and ELIS, queried 3/2025, TRK #17293. LCA data from DOL. Disclosure Files for LCA Programs (H-1B, H-1B1, E-3), FY 2024. DOL data downloaded from https://www.dol.gov/agencies/eta/foreign-labor/performance (last visited Nov. 24, 2025).

[141] *Id.*

e. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final rule, Including an Estimate of the Classes of Small Entities that Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

The selection process in the final rule will result in an additional burden to employers reporting additional information, including a beneficiary's appropriate wage level, SOC code, and area of intended employment in the registration system, on the Form I-129 petition, and on the H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement to Form I-129. DHS estimates the increased burden to submit an H-1B registration is 20 minutes and the increased burden to file the Form I-129, Petition for Nonimmigrant Worker, to request H-1B classification is 15 minutes. DHS believes this will be completed by an HR specialist, in-house lawyer, or outsourced lawyer.

f. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of the Applicable Statues, Including a Statement of Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

DHS considered alternative solutions that are described in further detail in the section on Executive Orders 12866 and 13563 earlier in the preamble of this rule, as well as in the comment summaries and responses. While the collection of additional information and the change to a weighted selection process will impose a burden on some prospective small employers, USCIS found no other alternatives that achieved the stated objectives with less burden to small entities.

Under the 2021 H-1B Selection Final Rule, USCIS would have ranked and selected registrations generally based on the highest prevailing wage level. The rule was expected to result in the likelihood that registrations for level I wages would not be selected, as well as a reduced likelihood that registrations for level II would be selected. Compared to this final rule, DHS believes that the 2021 H-1B Selection Final Rule approach would have an even greater negative effect on small businesses hiring lower wage level or entry level workers.

As stated earlier in this analysis, this final rule will also benefit small entities that are applying for higher-earning employees who will be weighted at level III or level IV as they will have a greater chance of their employees being selected compared to the current random selection process. Thus, it is possible that any alternative that imposes a lower burden on small entities generally could also reduce those employers' chance of selection for higher wage level workers. For example, if USCIS were to artificially elevate the corresponding wage level for small businesses compared to other businesses, such an alternative could actually decrease the likelihood that those small entities' registrations with a level IV wage will be selected, relative to the selection process under the final rule, if other small businesses are artificially elevated to level IV equivalency based on factors other than the corresponding wage amount. Furthermore, given that 76 percent of unique cap-subject H-1B filers are small entities, and 47 percent of H-1B cap petitions in FY 2024 were filed by small entities, any alternative process that provides a different, preferential weighting scheme especially for small entities would undermine the overall utility of this final rule, which is to generally favor the allocation of H-1B visas to higher-skilled and higher-paid aliens.

C. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this final rule is a major rule, as defined in 5 U.S.C. 804, also known as the "Congressional Review

Act" (CRA), as enacted in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, sec. 251, 110 Stat. 868, 873, and codified at 5 U.S.C. 801 et seq. Therefore, the rule requires at least a 60-day delayed effective date. DHS has complied with the CRA's reporting requirements and has sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a final rule that includes any Federal mandate that may result in a $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. *See* 2 U.S.C. 1532(a).

The inflation adjusted value of $100 million in 1995 is approximately $206 million in 2024 based on the Consumer Price Index for All Urban Consumers (CPI-U).[142] This final rule does not contain a Federal mandate as the term is defined under UMRA.[143] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

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[142] *See* DOL, BLS, Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month, https://www.bls.gov/cpi/tables/supplemental-files/home.htm, Historical CPI-U, September 2025 (XLSX)(database) (last visited Dec.11, 2025). Calculation of inflation percentage: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2024); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100 = [(Average monthly CPI-U for 2024 − Average monthly CPI-U for 1995) ÷ (Average monthly CPI-U for 1995)] × 100 = [(313.689 − 152.383)÷ 152.383] = (161.306 ÷ 152.383) = 1.059 × 100 = 105.86 percent = 106 percent (rounded). Calculation of inflation-adjusted value: Convert 106% inflation percentage to an inflation factor =1+106/100=2.06. $100 million in 1995 dollars × 2.06 = $206 million in 2024 dollars.

[143] The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1) and 658(6).

E. Executive Order 13132 (Federalism)

This final rule will not have substantial direct effects 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This final rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this final rule meets the applicable standards provided in section 3 of E.O. 12988.

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

This final rule does not have "tribal implications" because it will 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 Indian Tribes. Accordingly, E.O. 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

H. National Environmental Policy Act

DHS and its components analyze regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 "Implementing the National Environmental Policy Act" (Dir. 023– 01 Rev. 01) and Instruction Manual

023-01-001-01 Rev. 01 (Instruction Manual)[144] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions ("categorical exclusions") that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. *See* 42 U.S.C. 4336(a)(2), 4336e(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[145]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[146]

This final rule is limited to amending DHS's existing regulations at 8 CFR 214.2(h)(8), (10), and (11) to provide for the selection of unique beneficiaries toward the H-1B annual numerical limitations and the advanced degree exemption in a weighted manner based on the wage level listed in each H-1B registration that corresponds to the prospective petitioner's proffered wage. DHS has reviewed this final rule and finds that no significant impact on the environment, or any change in environmental effect, will result from the amendments being promulgated in this final rule.

Accordingly, DHS finds that the promulgation of this final rule's amendments to current regulations clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change with no change in

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[144] The Instruction Manual, which contains DHS's procedures for implementing NEPA, was issued on November 6, 2014, and is available at https://www.dhs.gov/ocrso/eed/epb/nepa (last modified July 29, 2025).
[145] *See* Appendix A, Table 1.
[146] Instruction Manual 023-01 at V.B(2)(a)-(c).

environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect.

I. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-12, DHS must submit to OMB, for review and approval, any reporting requirements inherent in a rule unless they are exempt. In accordance with the PRA, the information collection notice was published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instruments.

H-1B Registration Tool (OMB Control No. 1615-0144)

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* H-1B Registration Tool.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* OMB-64; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. USCIS uses the data collected on this form to determine which employers will be informed that they may submit a USCIS Form I-129, Petition for Nonimmigrant Worker, for H-1B classification.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection H-1B Registration Tool (Businesses) is 20,950 and the estimated hour burden per response is 0.9333 hours.[147] The estimated total

[147] This rule is not expected to impact the number of respondents. For PRA purposes, DHS uses the currently approved volume for OMB Control number 1615-0144 of 20,950. *See*

number of respondents for the information collection H-1B Registration Tool (Attorneys) is 19,339 and the estimated hour burden per response is 0.9333 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 331,872 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Form I-129 (OMB Control No. 1615-0009)

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I-129, E-1/E-2 Classification Supplement, Trade Agreement Supplement, H Classification Supplement, H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement, L Classification Supplement, O and P Classification Supplement, Q-1 Classification Supplement, and R-1 Classification Supplement; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. USCIS uses Form I-129 and accompanying supplements to determine whether the petitioner and beneficiary(ies) is (are) eligible for the nonimmigrant classification. A U.S. employer, or agent in some instances, may file a petition for nonimmigrant worker to employ foreign nationals under the following nonimmigrant classifications: H-1B, H-2A, H-2B, H-3, L-1, O-1, O-2, P-1, P-2, P-3, P-1S, P-2S, P-3S, Q-1, or R-1 nonimmigrant worker. The collection of this information is also required from a U.S. employer on a petition for an extension of stay or

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https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1615-0144 (last visited Dec. 8, 2025).

change of status for E-1, E-2, E-3, Free Trade H-1B1 Chile/Singapore nonimmigrants and TN (United States-Mexico-Canada Agreement workers) who are in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-129 (paper filing) is 527,606 and the estimated hour burden per response is 2.55 hours. The estimated total number of respondents for the information collection I-129 (online electronic filing) is 45,000 and the estimated hour burden per response is 2.333 hours. The estimated total number of respondents for the information collection E-1/E-1 Classification Supplement is 12,050 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection Trade Agreement Supplement (paper filing) is 10,945 and the estimated hour burden per response is 0.67 hours. The estimated total number of respondents for the information collection Trade Agreement Supplement (online electronic filing) is 2,000 and the estimated hour burden per response is 0.5833 hours. The estimated total number of respondents for the information collection H Classification (paper filing) is 426,983 and the estimated hour burden per response is 2.3 hours. The estimated total number of respondents for the information collection H Classification (online electronic filing) is 45,000 and the estimated hour burden per response is 2 hours. The estimated total number of respondents for the information collection H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement (paper filing) is 353,936 and the estimated hour burden per response is 1.25 hours. The estimated total number of respondents for the information collection H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement (online electronic filing) is 45,000 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection L Classification Supplement is 40,358 and the estimated hour burden per response is 1.34 hours. The estimated total number of

respondents for the information collection O and P Classification Supplement is 28,434 and the estimated hour burden per response is 1 hour. The estimated total number of respondents for the information collection Q-1 Classification Supplement is 54 and the estimated hour burden per response is 0.34 hours. The estimated total number of respondents for the information collection R-1 Classification Supplement is 6,782 and the estimated hour burden per response is 2.34 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 3,124,836 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $149,694,919.

List of Subjects in 8 CFR part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professionals, Reporting and recordkeeping requirements, Students.

Accordingly, DHS amends chapter I of title 8 of the Code of Federal Regulations as follows:

PART 214 – NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1188, 1221, 1281, 1282, 1301-1305, 1357, and 1372; sec. 643, Pub. L. 104-208, 110 Stat. 3009-708; Pub. L. 106-386, 114 Stat. 1477-1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115-218, 132 Stat. 1547 (48 U.S.C. 1806).

2. Amend § 214.2 by:

a. Revising paragraphs (h)(8)(iii)(A)(*3*), (h)(8)(iii)(A)(*4*), (h)(8)(iii)(A)(*5*)(*i*),

(h)(8)(iii)(A)(*5*)(*ii*), (h)(8)(iii)(A)(*6*)(*i*), (h)(8)(iii)(A)(*6*)(*ii*), (h)(8)(iii)(A)(*7*), (h)(8)(iii)(D)(*1*), (h)(8)(iv)(B) and (h)(10)(ii);

b. Redesignating paragraphs (h)(10)(iii) and (h)(10)(iv) as paragraphs (h)(10)(iv) and (h)(10)(v);

c. Adding new paragraph (h)(10)(iii);

d. Revising paragraphs (h)(11)(iii)(A)(*6*) and (h)(11)(iii)(A)(*7*); and

e. Adding paragraph (h)(11)(iii)(A)(*8*).

The revisions and additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

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(h) * * *

(8) * * *

(iii) * * *

(A) * * *

(*3*) *Initial registration period*. The annual initial registration period will last a minimum of 14 calendar days and will start at least 14 calendar days before the earliest date on which H-1B cap-subject petitions may be filed for a particular fiscal year, consistent with paragraph (h)(2)(i)(J) of this section. USCIS will announce the start and end dates of the initial registration period on the USCIS website at www.uscis.gov for each fiscal year. USCIS will announce the start of the initial registration period at least 30 calendar days in advance of such date.

(*4*) *Selecting registrations based on unique beneficiaries*. Registrations will be counted based on the number of unique beneficiaries who are registered. The selection will be made via computer-generated selection based on unique beneficiary. Each unique beneficiary will only be counted once toward the numerical allocation projections, regardless of how many registrations were submitted for that beneficiary or how many

times the beneficiary is entered in the selection pool as provided in paragraph (h)(8)(iii)(A)(*4*)(*ii*) of this section. USCIS will separately notify each registrant that its registration on behalf of a beneficiary has been selected, and that the petitioner(s) may file a petition(s) for that beneficiary. A petitioner may file an H-1B cap-subject petition on behalf of a registered beneficiary only after the petitioner's properly submitted registration for that beneficiary has been selected for that fiscal year.

(*i*) *Required information*. On the registration, the registrant must select the highest Occupational Employment and Wage Statistics (OEWS) wage level that the beneficiary's proffered wage equals or exceeds for the relevant Standard Occupational Classification (SOC) code in the area(s) of intended employment. If the beneficiary's proffered wage is lower than OEWS wage level I, because it is based on a prevailing wage from another legitimate source (other than OEWS) or an independent authoritative source, the registrant must select "wage level I." If the beneficiary will work in multiple locations, or in multiple positions if the registrant is an agent, the registrant must select the lowest corresponding OEWS wage level that the beneficiary's proffered wage will equal or exceed. If the beneficiary's proffered wage is expressed as a range, the registrant must select the OEWS wage level that the lowest wage in the range will equal or exceed. Where there is no current OEWS prevailing wage information for the beneficiary's proffered position, the registrant must select the OEWS wage level that corresponds to the requirements of the beneficiary's proffered position using the Department of Labor's prevailing wage guidance. The registrant must also provide the SOC code of the proffered position, the area of intended employment that served as the basis of the wage level selected on the registration, the beneficiary's valid passport or travel document information, and all other requested information, as well as make the necessary certifications, as specified on the registration form and instructions. Each beneficiary must only be registered under one valid passport or travel document, and if or when the

beneficiary is abroad, the passport information or travel document information must correspond to the passport or travel document the beneficiary intends to use to enter the United States.

(*ii*) *Weighted selection*. If a random selection is necessary, USCIS will assign each unique beneficiary to the lowest OEWS wage level among all registrations submitted on the beneficiary's behalf and will enter each unique beneficiary into the selection pool in a weighted manner as follows: a beneficiary assigned wage level IV will be entered into the selection pool four times, a beneficiary assigned wage level III will be entered into the selection pool three times, a beneficiary assigned wage level II will be entered into the selection pool two times, and a beneficiary assigned wage level I will be entered into the selection pool one time.

(*5*) * * *

(*i*) *Fewer registrations than needed to meet the H-1B regular cap*. At the end of the annual initial registration period, if USCIS determines that there are fewer unique beneficiaries on whose behalf registrations were properly submitted than needed to meet the H-1B regular cap, USCIS will notify all petitioners that have properly registered that their registrations have been selected. USCIS will keep the registration period open beyond the initial registration period, until it determines that it has received a sufficient number of registrations for unique beneficiaries to meet the H-1B regular cap. Once USCIS determines there is a sufficient number of properly registered unique beneficiaries to meet the H-1B regular cap, USCIS will no longer accept registrations for petitions subject to the H-1B regular cap under section 214(g)(1)(A) of the Act. USCIS will monitor the number of unique beneficiaries with properly submitted registrations and will notify the public of the date that USCIS has received the necessary number of registrations for unique beneficiaries (the "final registration date"). The day the public is notified will not control the applicable final registration date. If USCIS has received more

registrations for unique beneficiaries on the final registration date than necessary to meet the H-1B regular cap under section 214(g)(1)(A) of the Act, USCIS will weight each unique beneficiary as described in paragraph (h)(8)(iii)(A)(*4*)(*ii*) of this section and randomly select the number of unique beneficiaries deemed necessary to meet the H-1B regular cap.

(*ii*) *Sufficient registrations to meet the H-1B regular cap during initial registration period*. At the end of the initial registration period, if 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 regular cap, USCIS will no longer accept registrations under section 214(g)(1)(A) of the Act and will notify the public of the final registration date. USCIS will weight each unique beneficiary as described in paragraph (h)(8)(iii)(A)(*4*)(*ii*) of this section and randomly select the number of unique beneficiaries deemed necessary to meet the H-1B regular cap.

(*6*) * * *

(*i*) *Fewer registrations than needed to meet the H-1B advanced degree exemption numerical limitation*. If USCIS determines that there are fewer unique beneficiaries on whose behalf registrations were properly submitted than needed to meet the H-1B advanced degree exemption numerical limitation, USCIS will notify all petitioners that have properly registered that their registrations have been selected. USCIS will continue to accept registrations to file petitions for beneficiaries who may be eligible for the H-1B advanced degree exemption under section 214(g)(5)(C) of the Act until USCIS determines that there is a sufficient number of properly registered unique beneficiaries to meet the H-1B advanced degree exemption numerical limitation. USCIS will monitor the number of unique beneficiaries with properly submitted registrations and will notify the public of the date that USCIS has received the necessary number of registrations for unique beneficiaries (the “final registration date”). The day the public is notified will not

control the applicable final registration date. If USCIS has received more registrations for unique beneficiaries on the final registration date than necessary to meet the H-1B advanced degree exemption numerical limitation under section 214(g)(1)(A) and 214(g)(5)(C) of the Act, USCIS will weight each unique beneficiary as described in paragraph (h)(8)(iii)(A)(*4*)(*ii*) of this section and randomly select the number of unique beneficiaries deemed necessary to meet the H-1B advanced degree exemption numerical limitation.

(*ii*) *Sufficient registrations to meet the H-1B advanced degree exemption numerical limitation*. If 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 advanced degree exemption numerical limitation, USCIS will no longer accept registrations that may be eligible for exemption under section 214(g)(5)(C) of the Act and will notify the public of the final registration date. USCIS will weight each unique beneficiary as described in paragraph (h)(8)(iii)(A)(*4*)(*ii*) of this section and randomly select the number of unique beneficiaries deemed necessary to meet the H-1B advanced degree exemption numerical limitation.

(7) *Increase to the number of beneficiaries projected to meet the H-1B regular cap or advanced degree exemption allocations in a fiscal year*. Unselected properly submitted registrations for unique beneficiaries will remain on reserve for the applicable fiscal year. If USCIS determines that it needs to increase the number of registrations for unique beneficiaries projected to meet the H-1B regular cap or advanced degree exemption allocation, and select additional unique beneficiaries, USCIS will select from among the unique beneficiaries with properly submitted registrations that are on reserve a sufficient number to meet the H-1B regular cap or advanced degree exemption numerical limitation, as applicable. If all of the unique beneficiaries on reserve are selected and there are still fewer unique beneficiaries than needed to meet the H-1B regular cap or

advanced degree exemption numerical limitation, as applicable, USCIS may reopen the applicable registration period until USCIS determines that it has received a sufficient number of registrations for unique beneficiaries projected as needed to meet the H-1B regular cap or advanced degree exemption numerical limitation. USCIS will monitor the number of properly registered unique beneficiaries and will notify the public of the date that USCIS has received the necessary number of registrations (the new "final registration date"). The day the public is notified will not control the applicable final registration date. When selecting additional unique beneficiaries under this paragraph (h)(8)(iii)(A)(*7*), USCIS will select unique beneficiaries with properly submitted registrations in accordance with paragraphs (h)(8)(iii)(A)(*4*) through (*6*) of this section. If the registration period will be reopened, USCIS will announce the start of the re-opened registration period on the USCIS website at www.uscis.gov.

* * * * *

(D) * * *

(*1*) *Filing procedures*. In addition to any other applicable requirements, a petitioner may file an H-1B petition for a beneficiary who may be counted under section 214(g)(1)(A) of the Act or eligible for exemption under section 214(g)(5)(C) of the Act only if the petition is based on a valid registration, which means that the registration was properly submitted in accordance with § 103.2(a)(1) of this chapter, paragraph (h)(8)(iii) of this section, and the registration tool instructions; and was submitted by the petitioner, or its designated representative, on behalf of the beneficiary who was selected for that cap season by USCIS. A petitioner may not substitute the beneficiary named in the original registration or transfer the registration to another petitioner. An H-1B petition filed on behalf of a beneficiary must contain and be supported by the same identifying information and position information, including SOC code, provided in the selected registration and indicated on the labor condition application used to support the petition,

and must include a proffered wage that equals or exceeds the prevailing wage for the corresponding OEWS wage level in the registration for the SOC code in the area(s) of intended employment as described in paragraph (h)(8)(iii)(A)(*4*)(*i*) of this section. Petitioners must submit evidence of the basis of the wage level selected on the registration as of the date that the registration underlying the petition was submitted. Petitioners must also submit evidence of the passport or travel document used at the time of registration to identify the beneficiary. In its discretion, USCIS may find that a change in the beneficiary's identifying information in some circumstances would be permissible. Such circumstances could include, but are not limited to, a legal name change due to marriage or a change in passport number or expiration date due to renewal or replacement of a stolen passport, in between the time of registration submission and petition filing. In its discretion, USCIS may find that a change in the area(s) of intended employment would be permissible, provided such change is consistent with the requirement of a bona fide job offer at the time of registration as stated in paragraph (h)(10)(ii) of this section. USCIS may deny or revoke the approval of an H-1B petition that does not meet these requirements.

* * * * *

(iv) * * *

(B) *Petition-based cap-subject selections in event of suspended registration process*. In any year in which USCIS suspends the H-1B registration process for cap-subject petitions, USCIS will allow for the submission of H-1B petitions notwithstanding paragraph (h)(8)(iii) of this section and conduct a cap-subject selection process based on the petitions that are received. Each petitioner must select the highest OEWS wage level that the beneficiary's proffered wage equals or exceeds for the relevant SOC code in the area(s) of intended employment. If the beneficiary's proffered wage is lower than OEWS wage level I, because it is based on a prevailing wage from another legitimate source

(other than OEWS) or an independent authoritative source, the petitioner must select "wage level I." If the beneficiary will work in multiple locations, or in multiple positions if the petitioner is an agent, the petitioner must select the lowest corresponding OEWS wage level that the beneficiary's proffered wage will equal or exceed. Where there is no current OEWS prevailing wage information for the beneficiary's proffered position, the petitioner must select the appropriate wage level that corresponds to the requirements of the beneficiary's proffered position using the Department of Labor's prevailing wage guidance. If a random selection is necessary, each petition will be assigned the OEWS wage level selected in accordance with form instructions and will be entered into the selection pool in a weighted manner as follows: a petition assigned wage level IV will be entered into the selection pool four times, a petition assigned wage level III will be entered into the selection pool three times, a petition assigned wage level II will be entered into the selection pool two times, and a petition assigned wage level I will be entered into the selection pool one time. The selection will be made via computer-generated selection. Petitioners must submit evidence of the basis of the selected wage level as of the date the petition is submitted. USCIS will deny petitions indicating that they are exempt from the H-1B regular cap and the H-1B advanced degree exemption if USCIS determines, after the final receipt date, that they are not eligible for the exemption sought. If USCIS determines, on or before the final receipt date, that the petition is not eligible for the exemption sought, USCIS may consider the petition under the applicable numerical allocation and proceed with processing of the petition. If a petition is denied under this paragraph (h)(8)(iv)(B), USCIS will not return or refund filing fees.

(*1*) *H-1B regular cap selection in event of suspended registration process*. In determining whether there are enough H-1B cap-subject petitions to meet the H-1B regular cap, USCIS will consider all petitions properly submitted in accordance with § 103.2 of this chapter relating to beneficiaries who may be counted under section

214(g)(1)(A) of the Act, including those who may be eligible for exemption under section 214(g)(5)(C) of the Act. When calculating the number of petitions needed to meet the H-1B regular cap, USCIS will take into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions received and will announce on its website the date that it receives the number of petitions projected as needed to meet the H-1B regular cap (the "final receipt date"). The date the announcement is posted will not control the final receipt date. If the final receipt date is any of the first five business days on which petitions subject to the H-1B regular cap may be received (in other words, if the numerical limitation is reached on any one of the first five business days that filings can be made), USCIS will weight each petition as described in paragraph (h)(8)(iv)(B) of this section and randomly select the number of petitions properly submitted during the first five business days deemed necessary to meet the H-1B regular cap.

(*2*) *Advanced degree exemption selection in event of suspended registration process*. After USCIS has received a sufficient number of petitions to meet the H-1B regular cap and, as applicable, completed the random selection process of petitions for the H-1B regular cap, USCIS will determine whether there is a sufficient number of remaining petitions to meet the H-1B advanced degree exemption numerical limitation. When calculating the number of petitions needed to meet the H-1B advanced degree exemption numerical limitation, USCIS will take into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions received and will announce on its website the date that it receives the number of petitions projected as needed to meet the H-1B advanced degree exemption numerical limitation (the "final receipt date"). The date the announcement is posted will not control the final receipt date. If the final receipt date is any of the first five business days on which petitions subject to the H-1B advanced degree exemption may be received

(in other words, if the numerical limitation is reached on any one of the first five business days that filings can be made), USCIS will weight each petition as described in paragraph (h)(8)(iv)(B) of this section and randomly select the number of petitions properly submitted during the first five business days deemed necessary to meet the H-1B advanced degree exemption numerical limitation.

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(10) * * *

(ii) *Denial for statement of facts on the petition, H-1B registration, temporary labor certification, or labor condition application, or invalid H-1B registration*. The petition will be denied if it is determined that the statements on the petition, the H-1B registration (if applicable), the application for a temporary labor certification, or the labor condition application were inaccurate, fraudulent, or misrepresented a material fact, including if the certifications on the registration are determined to be false. An H-1B cap-subject petition also will be denied if it is not based on a valid registration submitted by the petitioner (or its designated representative), or a successor in interest, for the beneficiary named or identified in the petition. A valid registration must represent a bona fide job offer.

(iii) *Denial for attempt to unfairly increase the chance of selection.* USCIS may deny a subsequent new or amended petition filed by the petitioner, or a related entity, on behalf of the same beneficiary, if USCIS determines that the filing of the new or amended petition is part of the petitioner's attempt to unfairly increase the chance of selection during the registration or petition selection process, as applicable, such as by changing the proffered wage in a subsequent new or amended petition to an amount that would be equivalent to a lower wage level than that indicated on the registration, or the original cap-subject petition if the registration process was suspended.

* * * * *

(11) * * *

(iii) * * *

(A) * * *

(*6*) The H-1B cap-subject petition was not based on a valid registration submitted by the petitioner (or its designated representative), or a successor in interest, for the beneficiary named or identified in the petition;

(*7*) The petitioner failed to timely file an amended petition notifying USCIS of a material change or otherwise failed to comply with the material change reporting requirements in paragraph (h)(2)(i)(E) of this section; or

(*8*) The petitioner, or a related entity, filed a new or amended petition on behalf of the same beneficiary, if USCIS determines that the filing of the new or amended petition is part of the petitioner's (or related entity's) attempt to unfairly increase the chance of selection during the registration or petition selection process, as applicable, such as by changing the proffered wage in a subsequent new or amended petition to an amount that would be equivalent to a lower wage level than that indicated on the registration, or the original cap-subject petition if the registration process was suspended.

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Kristi Noem,
Secretary,
U.S. Department of Homeland Security.

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