October 24, 2025

Office of Policy and Strategy, Regulatory Coordination Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529-2120

Submitted via www.regulations.gov

Re: Department of Homeland Security, U.S. Citizenship and Immigration Services, Notice of Proposed Rulemaking; *Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H–1B Petitions* (DHS Docket No. USCIS–2025–0040; CIS No: 2820–25; RIN 1615–AD01)

To Whom it May Concern:

The American Immigration Lawyers Association (AILA) and the American Immigration Council (Council) respectfully submit this comment in opposition to the notice of proposed rulemaking (NPRM) published in the Federal Register on September 24, 2025 by U.S. Citizenship and Immigration Services (USCIS) amending its 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 is suspended), DHS Docket No. USCIS–2025–0040, *Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H–1B Petitions* (Proposed Rule).[1] For the reasons discussed below, we urge USCIS to withdraw its notice of proposed rulemaking.

Established in 1946, AILA is a voluntary bar association of more than 18,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We believe that our members' collective expertise and experience make us particularly well-qualified to offer views on this matter.

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of

[1] 90 Fed. Reg. 45986 (Sept. 24, 2025).

America's immigrants. The Council frequently appears before federal courts on issues relating to the interpretation of the Immigration and Nationality Act (INA) and its implementing regulations.

We appreciate the opportunity to provide comments on this Proposed Rule and strongly recommend that, after reviewing these comments and others made by stakeholders, your office withdraw the NPRM. The proposal, which is based on the false premise that salary alone equates with one's value to our economy and society, is yet another misguided and illegal attempt by the Trump administration to weaken our legal immigration system and promote falsities about the workers who, contrary to what this Proposed Rule implies, strengthen our economy. As discussed in more detail below, AILA and the Council strongly oppose the Proposed Rule and urge the agency to withdraw it because it 1) is *ultra vires* and inconsistent with congressional intent; 2) will undermine our nation's pipeline of global talent needed to drive innovation and foster economic growth; and 3) is based on faulty interpretations and applications of the existing U.S. Department of Labor's (DOL) Occupational Employment and Wage Statistics (OEWS) data.

Further, as noted in a separate comment, AILA and the Council are concerned that the 30-day comment period is insufficient to allow the public to provide meaningful input to USCIS on a Proposed Rule of such magnitude, and urge USCIS to extend the comment period by 30 days to provide a full 60-day comment period.[2] If USCIS finalizes this illegal and misguided Proposed Rule, the agency must delay implementation at least until the FY2028 H-1B cap filing season in order to allow U.S. employers and their workers sufficient time to adapt to the new wage-based selection process.

A. The Proposed Rule Is *Ultra Vir*es and Violates Congressional Intent

The Proposed 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 Immigration and Nationality Act (INA). Congress created the current H-1B quota of 65,000 H-1B cap numbers and provided plain and unambiguous language on how petitions subject to the cap should be selected.[3] INA section 214(g)(3) clearly 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."[4] The statute does not impose any other criteria on the H-1B cap-subject petition selection process, nor does it provide any authority for USCIS to impose qualitative factors such as offered salary in the allocation of H-1B cap numbers.

When Congress passed the H-1B Visa Reform Act of 2004, it added an exemption for the first 20,000 cap-subject petitions for those beneficiaries with a master's degree or higher from a U.S. institution of higher education.[5] The exemption did not deviate from the requirement in INA §214(g)(3) to issue H-1B numbers in the order in which the petitions are filed and was expressly

[2] Comment available at https://www.regulations.gov/comment/USCIS-2025-0040-1499.
[3] Pub. L. No. 101-649.
[4] INA §214(g)(3).
[5] Pub. L. No. 108-447.

silent on any added wage or skill level elements to the selection process.[6] Before the H-1B Visa Reform Act of 2004, the H-1B cap was reached in prior years; therefore, Congress was well aware of the demand for H-1B cap numbers from U.S. businesses. Even with this information, Congress chose to leave the language of INA section 214(g)(3) unchanged, and to only add the advance degree element to the H-1B cap exemption at section 214(g)(5). This was an instance where Congress made a specific modification to the way in which H-1B numbers are allocated, with consideration of how an advanced degree from a U.S. institution of higher education would make it more likely that an H-1B beneficiary would be selected under the H-1B quota. The proposed amendment to add the wage level element is *ultra vires* and violates clear congressional intent.

In 2024, Supreme Court overruled the *Chevron*[7] framework in *Loper Bright Enterprises v. Raimondo,*[8] eliminating judicial deference to agencies in Administrative Procedure Act (APA) rulemaking and providing the judiciary more independent judgment to determine whether an agency has acted within its statutory authority. Moreover, the well-established principle of law remains that an agency cannot modify a statute by regulation remains unchanged.[9] Through the Immigration Act of 1990, and the H-1B Visa Reform Act of 2004, Congress clearly laid out how the H-1B cap numbers are to be selected. Based on the plain text of INA §214(g)(3) and the statutory context in which it is found, the statute is neither ambiguous nor silent, and Congress did not leave a gap for USCIS interpretation via regulation.[10]

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. Specifically, USCIS concluded that "prioritization of registration selection on factors other than degree level, such as salary, would require ***statutory changes***."[11] In the Proposed Rule, USCIS acknowledges that "the current random selection of petitions or registrations is reasonable."[12] However, USCIS goes on to note how it believes the system is not optimal, and it is not the only available method for selection.[13] While USCIS tries to justify the agency's preference it cites no congressional intent relating to the H-1B numerical cap. The Proposed Rule's references include partisan websites and news articles, previous proposed rules, and a few DOL and Congressional

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[6] INA §214(g)(5). H-1B Visa Reform Act of 2004, Pub. L. No. 108-447, div. J, tit. IV, subtit. B, §§422, 424 and 425(a) 118 Stat. 3353, 3353-56.

[7] *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984).

[8] 603 U.S. 369 (2024).

[9] *See, e.g., Kucana v. Holde*r, 558 U.S. 233, 247-248, 251 (2010) (Congress alone has the authority to legislate, including defining the scope of agency discretion. Under 8 U.S.C. § 1252(a)(2)(B)(ii), Congress barred judicial review only for decisions specified to be within the agency's discretion by statute. An agency cannot bar judicial review of BIA denial of motion to reopen by conferring discretion through regulation when Congress provided in 8 USC § 1252(a)(2)(B)(ii) that decisions specified to be in the agency's discretion are conferred by statute.)

[10] *Prestol Espinal v. Attorney General of the United States*, 653 F.3d 213, 220 (3d Cir. 2011) (rejecting effort to "manufacture[] an ambiguity from Congress' failure to specifically foreclose each exception that could possibly be conjured or imagined.").

[11] *See* Registration Requirement for Petitioners Seeking To File H–1B Petitions on Behalf of Cap Subject Aliens, 84 Fed.Reg. 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.") (emphasis added).

[12] Proposed Rule, *supra* note 1 at 45990.

[13] *Id.*

Research Service statistical reports. However, USCIS's justification and reasoning lacks analysis from official research or studies by government agencies. USCIS also fails to analyze how the wage amendment interacts with existing DOL H-1B Labor Condition Application requirements.

The Proposed Rule also cites to the House Report for the Family Unity and Employment Opportunity Immigration Act of 1990 which was introduced and passed in the House but failed to be enacted into law.[14] This further strengthens our position that Congress was well aware of the need for American businesses to have access to highly skilled workers in 1990 when it passed the more comprehensive Immigration Act of 1990 creating the 65,000 H-1B cap. Notably, Congress has sought to legislate on this exact issue multiple times. In 2021 and 2023, the U.S. Citizenship Act sought to give DHS authority to prioritize allocation of H-1B visas by wages, in consultation with the Department of Labor.[15] Moreover, just a few days after DHS published the Proposed Rule, bipartisan members of Congress introduced the H-1B and L-1 Visa Reform Act of 2025, which seeks to amend the INA to allow prioritization of H-1B visa allocations based on factors including wage level.[16] There would be no need for Congress to seek to legislate on this issue if the statute already permitted such an interpretation.

Agency preferences cannot change the fact that the statutes are clear and unambiguous with respect to how H-1B cap numbers are selected. USCIS cannot legally implement a regulation that is *ultra vires* and goes against the clear text of the statutes. USCIS failed to explain how it finds statutory support for its policy as required, nor has USCIS explained why it believes this policy aligns with the best reading of the statute. This Proposed Rule must be withdrawn.

B. The Proposed Rule Erroneously Relies on Case Law to Usurp Congressional Authority

As discussed above, the Proposed Rule contravenes the allocation system prescribed by Congress in the INA. Lacking statutory support, the agency erroneously relies on case law to change the allocation system, thereby usurping Congress's authority.

The Proposed Rule miscites *Liu v. Mayorkas*, which does not support the agency's proposed imposition of a thumb-on-the-scale lottery system based on wage levels. [17] Reliance on this case is wholly misplaced because it is not controlling law.

Liu upheld only a neutral, random lottery system where every registrant had equal selection odds. 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 § 214(g)(3) chronological allocation process begins. The court, however, never endorsed favoring certain registrants based on wage levels or other weighting criteria. Extending *Liu* to justify a wage-weighting lottery indefensibly expands its narrow holding.

Also, even assuming *Liu* remains relevant, it is a single, non-binding district court decision. USCIS

[14] 90 Fed. Reg. at 45990, footnote 21.
[15] H-1B and L-1 Visa Reform Act of 2025, S.2928, 119th Cong. §104 (2025).
[16] *Id*.
[17] 588 F. Supp. 3d 43 (D.D.C. 2022).

cannot reasonably rely on a solitary, non-binding decision to justify a fundamental change in the allocation of H-1B visas. A rule of such national importance demands clear statutory grounding and a more robust legal basis than what *Liu* provides.

In addition, serious statutory and administrative concerns remain unresolved. The INA prescribes that H-1B visas are to be allocated in the order in which petitions are filed when demand exceeds supply. Departures from chronological or neutral allocation require clear textual authority, which the NPRM has not demonstrated.

AILA and the Council maintain that the use of wage levels as a weighting factor is arbitrary and capricious because an offered wage is at best an imperfect proxy for national interest or merit and is full of faults. Furthermore, by altering the long-standing method of allocation in a way that has broad economic and political consequences, the Proposed Rule implicates the major questions doctrine and requires unmistakable congressional authorization, not reliance on a single district court opinion.[18]

Simply stated, *Liu v. Mayorkas* does not support the proposed wage-weighted lottery. The government lacks independent statutory justification for such a significant departure from established practice. For these reasons, AILA and the Council urge USCIS to withdraw the Proposed Rule.

C. The Proposed Rule Is Based on a False Premise

The Proposed Rule is based on the false premise that salary alone equates with value. of the four DOL wage levels do not fully capture an individual's contribution to innovation, the economy, or society. In fact, there is often an inverse correlation, as we often see teachers, social workers, and government employees sacrifice high wages in exchange for their service to the community and the public. Further, the wage levels do not reflect the comparative worth between occupations. Is a first-year cancer researcher or chemical engineer less valuable to the United States than a mid-career architect? It appears unlikely that a recently graduated cancer researcher or chemical engineer with limited work experience could obtain an H-1B classification under the Proposed Rule. The proposed weighted system would almost certainly disadvantage early-career professionals in high-impact technical and scientific roles.

Moreover, a higher wage level does not necessarily equate to a higher level of skill. The DOL's prevailing wage system is based on statistical wage data and job classifications that include positions that vary widely across industries and geographic regions. Many positions classified at Level I or Level II involve highly technical, specialized, or research-intensive work requiring advanced degrees, yet pay less simply because they occur in academia, non-profit research, or public-interest sectors where compensation is lower. Conversely, some private-sector positions classified at Level III or Level IV may command higher salaries due to factors other than the worker's individual skill or expertise (e.g., salary negotiation, market conditions, location, or firm size). Thus, attempting to use wage level as a proxy for skill creates a distorted and inaccurate

[18] *West Virginia v. EPA,.* 597 U.S. 697 (2022)(When a case involves "major questions" of great "economic and political significance," there must be clear congressional authorization for the power. See also, *Whitman v. American Trucking Ass'ns, Inc*.,531 U.S. 457 (2001)(" "Congress … does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not, one might say, hide elephants in mouseholes").

measure of merit, penalizing employers and workers in lower-paying industries that nonetheless demand significant technical ability and education.

In the 2020 Notice of Proposed Rulemaking, *Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions* (2020 NPRM),[19] USCIS acknowledged that virtually no individuals paid a Level I wage would be selected for submission of an H-1B cap-subject petition for the annual H-1B cap. The current Proposed Rule does not explicitly preclude individuals being paid a Level I wage. However, because Level I candidates receive only one entry, versus multiple entries for higher levels, their odds are drastically diminished. In practice, the proposed weights may mean many or most Level I wage beneficiaries would rarely, if ever, be selected. By USCIS's own estimates in the Proposed Rule, under the weighted selection process, the number of Level I petitions selected would decline compared to a purely random lottery: the model shows a drop in Level I selections of about 10,099 under weighted vs. random.[20]

By heavily weighting selection odds toward higher wage levels, the Proposed Rule would significantly reduce the likelihood that early-career professionals—particularly recent graduates of U.S. universities—could obtain an H-1B visa classification. This is deeply concerning because the H-1B visa category remains the primary legal avenue through which U.S. employers hire foreign graduates of U.S. higher education institutions. Employers who want to submit petitions on behalf of entry-level workers may feel compelled to compensate them on par with senior-level employees to optimize the possibility of selection. The reality is this scheme reduces opportunities for entry-level workers because hiring them would be financially prohibitive. As a result, this scheme would likely destabilize internal wage structures across industries.

The detrimental impact of the Proposed Rule on the ability of U.S. employers to recruit early career professionals and leverage their U.S. education and training will be as profound as it is long lasting. To be competitive in the global economy, nations must possess high-skilled labor forces with strong capabilities in science, technology, engineering, and mathematics (STEM), a key input for innovation and economic growth.[21] Further, to maintain the United States' position as a global superpower, our nation must continue to invest in and cultivate technological and scientific excellence, particularly in fields such as artificial intelligence, advanced engineering, and defense technologies. Sustaining leadership in these critical domains depends not merely on hiring the highest-paid professionals, but on ensuring that U.S. employers can access and develop the best and brightest emerging talent graduating from our universities.

It has been widely documented that foreign nationals comprise a significant percentage of U.S. college graduates, at the Bachelor's, Master's and Ph.D. levels, in STEM fields.[22] For example, the majority, and in many cases, the vast majority, graduate students in the fields of Industrial Engineering, Mechanical Engineering, Agricultural Engineering, Chemical Engineering and

[19] 85 Fed. Reg. 69236 (Nov. 2, 2020).
[20] 90 Fed. Reg. 45986, Table 14.
[21] Neil G. Ruiz, Jill H. Wilson & Shyamali Choudhury, *The Search for Skills: Demand for H-1B Immigrant Workers in U.S. Metropolitan Areas*, METROPOLITAN POLICY PROGRAM AT BROOKINGS, July 2012.
[22] Elizabeth Redden, *Foreign Students and Graduate STEM Enrollment*, INSIDE HIGHER ED, Oct. 11, 2017.

Pharmaceutical Sciences are international students.[23] U.S. employers aggressively recruit the top students from U.S. colleges and universities to fill early career positions that leverage their skills, such as computational and analytical skills as well as their ability to adopt and master new technologies. [24] Elaborate professional development programs and career paths have been created for these prospective new hires, comprising a significant investment in both financial and human capital, to best leverage their skills. Employers rely upon access to these highly educated and talented professionals, of which foreign students are a critical component pipeline.[25] If implemented, this Proposed Rule would erode that pipeline. Employers would be deprived of critical talent that supports research and development initiatives. The result would be a contraction of U.S. innovation capacity precisely when global competition for technical expertise is intensifying.[26] Along with other recent policies, the Administration is hobbling the American economy by undercutting innovation.[27]

Additionally, small and medium-sized firms, those that often rely most on H-1B talent to compete with larger business competitors, would face systemic barriers to hiring and retaining key global talent. From a macroeconomic perspective, the Proposed Rule would chill hiring and investment in innovation in the U.S. by smaller and start-up companies and drive next-generation economic opportunities elsewhere. This is not speculation. The Financial Times has reported that "tech start-ups and companies in the U.K., Canada, and India see potential gains as skilled workers … reconsider relocating to the U.S. due to stricter immigration policies."[28]

The Proposed Rule could also erode access to medical care in America. H-1Bs are used heavily in the medical industry—often by those who have received medical training in the United States—

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[23] *Id*. (noting, for example, that "81 percent of full-time graduate students in electrical and petroleum engineering programs at U.S. universities are international students, and 79 percent in computer science are.").
[24] For background on the value of recent graduates to businesses, *see* Carmen Bryant, *Tomorrow's Talent Today: 5 Reasons to Hire Recent Graduates*, INDEED, June 22, 2017.
[25] Michael Roach and John Skrentny, *We must retain foreign Ph.D.s to keep America's innovation advantage*, THE HILL, Aug. 19, 2020 (noting that "[a]llowing foreign Ph.D.s to remain in the U.S. after graduation is important because they contribute disproportionately to American innovation and entrepreneurship relative to other degrees."); *see also,* David Mikkelson, *Did Trump just say Foreigners Attending College in the US 'Should Not Be Thrown Out'?,* SNOPES, July 8, 2020 (quoting then Presidential candidate Trump as tweeting in 2015, "When foreigners attend our great colleges & want to stay in the U.S., they should not be thrown out of our country.").
[26] This Proposed Rule along with *Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors and Representatives of Foreign Information Media,* 90 Fed. Reg. 42070 (Aug. 28, 2025), as well threats to end Optional Practical Training, will have a negative impact on the economy. the Administration is hobbling the American economy by undercutting innovation. It is shutting down the pipeline that brings the brightest foreign students to the United States to study alongside American students, then retains their talent in American businesses. Instead, the Administration is driving that talent to global competitors like Canada and China, who see the recent U.S. policies as an opportunity.
[27] Clemens, M. A., Neufeld, J., & Nice, A. M. (2024). *Brain Freeze: How International Student Exclusion Will Shape the STEM Workforce and Economic Growth in the United States*. National Academies of Sciences, Engineering, and Medicine. https://nap.nationalacademies.org/resource/29283/BrainFreeze_Working_Paper_Clemens-Neufeld-Nice.pdf.
[28] 'We Were Getting Second-League Picks': Global tech firms seek to benefit from U.S. visa clampdown," Financial Times, https://www.ft.com/content/f658cf19-fae2-40e1-b88d-7dbf68ea18ba.

with 5,640 approved petitions[29] in the healthcare and social assistance industry in 2025. Almost 23,000 H-1B physicians worked in underserved communities between 2001 and 2024.[30] be directly impacted by the Proposed Rule if U.S.-based pharmaceutical companies, that have hired over 3,000 H-1B scientists since FY 2010, no longer have access to talented H-1B scientists involved in researching and developing treatments.[31]

The prospect of being able to obtain an H-1B after studying in the United States in F-1 status is a key element for attracting top international students to attend colleges and universities in the United States. As one major college reported, campus leaders warned that new H-1B restrictions would restrict the dynamism that foreign-born students bring to U.S. colleges and universities.[32] A recently published survey documented that 53% of prospective international students would have skipped U.S. study if H-1B selection were wage-based[33]. Other outlets have highlighted the same concern: the Proposed Rule will disadvantage younger or lower-paid applicants, thus creating disincentives for foreign born talent to choose the U.S to pursue their academic and professional careers.[34]

By effectively eliminating the ability of U.S. employers to use the H-1B visa program to legally hire recent foreign national graduates of U.S. universities and other early-career professionals, this Proposed Rule will disrupt business operations across nearly every sector of our economy. New product development, new market expansion efforts, and industrial responsiveness in a fast-changing, competitive global environment will all be negatively affected by this Proposed Rule. For example, companies in the automotive sector that have committed hundreds of millions of dollars in recent years to developing fuel efficient engines, including hydrogen fuel cell technology, will no longer be able to hire and retain recent graduates via the H-1B visa program who have precisely the academic background necessary to drive innovation.[35] The Proposed Rule's simplistic correlation between a worker's salary and their value to the U.S. economy will backfire. Top global talent will not have an opportunity to grow their career in the United States and will

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[29] Roy, Mrinalika, "Trump's H-1B visa fee increase raises US doctor shortage concerns", Reuters, September 24, 2025, https://www.reuters.com/business/healthcare-pharmaceuticals/trumps-h-1b-visa-fee-increase-raises-us-doctor-shortage-concerns-2025-09-24/.

[30] "American Medical Association (AMA) urges DHS to exempt physicians from new $100,000 H-1B visa fee", AMA letter to DHS Secretary Kristi Noem, September 25, 2025, https://www.ama-assn.org/press-center/ama-press-releases/ama-urges-dhs-exempt-physicians-new-100000-h-1b-visa-fee.

[31] "The H-1B Visa Program and Its Impact on the U.S. Economy", American Immigration Council, September 22, 2025, https://www.americanimmigrationcouncil.org/fact-sheet/h1b-visa-program-fact-sheet/.

[32] "53% of international students would skip the U.S. if H-1Bs were wage-based," Times of India, Oct. 4, 2025, https://timesofindia.indiatimes.com/education/news/53-of-international-students-would-skip-the-us-if-h-1bs-were-wage-based-heres-why-it-threatens-the-talent-pipeline/articleshow/124310813.cms

[33] Survey available at (https://ifp.org/wp-content/uploads/2025-Surveys-on-International-Talent-Pipelines-1.pdf.) from Michael Clemens, Jeremy Neufeld, Amy Nice filed at Regulations.gov.

[34] "U.S. H-1B visas: lottery to be replaced by weighted selection process — impact on foreign students," Firstpost, July 22, 2025, https://www.firstpost.com/explainers/us-h-1b-visas-lottery-replace-weighted-selection-process-foreign-students-impact-13910232.html.

[35] Andy East, *PLANNING AHEAD: Cummins "ready" for shift away from fossil fuels*, THE REPUBLIC, Nov. 17, 2020.

pursue opportunities with our global competitors.[36]

The Proposed Rule will also further destabilize the U.S. higher education system, which continues to recover from enrollment declines and financial strain following the COVID-19 pandemic. International students choose U.S. institutions not only for academic excellence but also for the opportunity to gain practical experience after graduation. Eliminating or reducing that opportunity undercuts one of America's strongest recruitment advantages. In 2018–2019, international students contributed $44.7 billion to the U.S. economy, supporting hundreds of thousands of jobs.[37] By making post-graduation employment prospects more uncertain, the Proposed Rule risks deterring international enrollment for years to come to the detriment of U.S. universities nationwide and further eroding the pipeline of higher education to critical workforce employment.

The H-1B visa category is a key pathway for international graduates to remain in the United States. A sizable number (nearly 25%) of new annual H-1B approvals are statutorily reserved for students with graduate degrees from U.S. universities and colleges, highlighting the close connection between foreign students and innovation. International students stay and contribute to the U.S. economy—143 U.S. companies worth over a billion dollars have a founder who was an international student, including 25% of the founders of billion-dollar startup companies in the United States.[38] These companies include household names like SpaceX, Stripe, Epic Games, and Instacart – all of which employ thousands of American workers. Indeed, Elon Musk, a famous entrepreneur and founder of SpaceX whose main companies collectively employ over 130,000[39] people, is an example of the international student to H-1B pathway.[40]

In addition to damaging business operations and ravaging the U.S. college and university system, the Proposed Rule will create incentives for corporate leaders to relocate jobs and innovation functions offshore.[41] If employers cannot hire skilled graduates in the United States, they will move the work to where they can. By making early-career hiring in the United States cost-prohibitive and more unpredictable, the Proposed Rule encourages companies to expand

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[36] American Immigration Lawyers Association (AILA). (2025, October 2). *Policies Targeting Skilled Workers and Students Crush American Innovation and Harm Our Economy*. https://www.aila.org/policy-brief-policies-targeting-skilled-workers-and-students-crush-american-innovation-and-harm-our-economy.

[37] *Number of International Students in the United States Hits All-Time High*, INSTITUTE OF INTERNATIONAL EDUCATION, Nov. 18, 2019 (citing the 2019 Open Doors Report on International Educational Exchange, which indicates that "[w]e are happy to see the continued growth in the number of international students in the United States and U.S. students studying abroad . . . [p]romoting international student mobility remains a top priority for the Bureau of Educational and Cultural Affairs and we want even more students in the future to see the United States as the best destination to earn their degrees. International exchange makes our colleges and universities more dynamic for all students and an education at a U.S. institution can have a transformative effect for international students, just like study abroad experiences can for U.S. students.").

[38] Stuart Anderson, Policy Brief, "Immigrant Entrepreneurs and U.S Billion Dollar Companies," National Foundation for American Policy (July 2022).

[39] Baker, Brian, "Elon Musk in 2025: What to know about the world's richest person, Bankrate, September 5, 2025 https://www.bankrate.com/investing/elon-musk/.

[40] Musk stated that he began on a "J-1 visa that transitioned to an H1-B" [sic]. https://www.cnn.com/2024/10/28/us/elon-musk-immigration-washington-post-cec

[41] *See* Britta Glennon, "How do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program" (2024).

operations abroad, exporting not only jobs but also innovation potential. Companies that rely on skilled foreign workers for R&D related functions will outsource more tasks to workers outside the United States.[42] The negative effect of moving innovation abroad will have disastrous economic consequences, in both the short and long term. This outcome is directly at odds with the Homeland Security Act, 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."[43]

D. The Proposed Rule Would Entrench Advantage for Large, Well-Capitalized Employers and Disadvantage Smaller Employers and Key U.S. Industries

The proposed wage-weighted lottery gives a disproportionate advantage to large corporations able to absorb higher salary costs. According to the Congressional Research Service's 2025 H-1B report, nearly half of all H-1B petitions currently originate from the professional, scientific, and technical services sector — a field dominated by established multinational firms.[44] This is confirmed by data from USCIS itself, which shows that tech giants are the top seven H-1B employers, with over 36.7 thousand workers among them in fiscal 2025.[45] Such large entities may be the only employers financially able to structure compensation packages at the upper end of the prevailing wage scale -- not necessarily because the roles with these companies demand higher skill, but because they have the financial means. A weighted lottery system would exaggerate their dominance of the program.

By contrast, small businesses and startups—often the most dynamic sources of innovation—would be unable to afford such wage premiums. 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 system. A wage-weighted system would thus exclude many early-stage companies from accessing global talent, even though their growth potential and contribution to the economy far exceed that of established firms.
According to the U.S. Bureau of Labor Statistics, businesses with 249 or fewer employees accounted for 55 percent of all net job creation in the United States between 2013 and 2023, underscoring their centrality to employment growth.[46] Likewise, a report by Heartland Forward found that venture-backed firms—many of which begin as small enterprises—create jobs at eight times the rate of non-venture-backed firms, demonstrating that rapid growth and innovation often originate in early-stage firms unable to pay higher wages.[47]

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[42] *See generally* Michelle Marks, *Skilled, foreign workers are giving up on their American dreams – and turning to Canada*, BUSINESS INSIDER, Mar. 31, 2019.
[43] 6 USC 11(b)(1)(F).
[44] *Cong. Research Serv.*, The H-1B Visa for Specialty Occupation Workers, CRS Report No. IF12912, at 2,Feb. 18, 2025,https://www.congress.gov/crs-product/IF12912
[45]U.S. Citizenship & Immigration Services, *H-1B Employer Data Hub*, https://www.uscis.gov/tools/reports-and-studies/h-1b-employer-data-hub.
[46]*See* U.S. Bureau of Lab. Stat., *The Economics Daily: Small Businesses Contributed 55 Percent of the Total Net Job Creation from 2013 to 2023* (Apr. 2024) (https://www.bls.gov/opub/ted/2024/small-businesses-contributed-55-percent-of-the-total-net-job-creation-from-2013-to-2023.htm)
[47] *See Heartland Forward*, *Venture Equity Report 2024: Revitalizing Innovation*.

In industries like biotechnology, artificial intelligence, energy, and quantum computing, early-stage firms rely on H-1B talent for access to highly specialized expertise unavailable in the domestic labor pool. These companies often attract skilled professionals who willingly accept lower base pay in exchange for equity, intellectual excitement, and the opportunity to work on frontier technologies. A policy that equates "value" exclusively with base salary would disregard these market realities and penalize exactly the kind of high-risk, high-reward innovation that fuels the U.S. economy.

The Proposed Rule also disadvantages nonprofits and social enterprises that operate with public-interest missions. Data from the Congressional Research Service shows that many H-1B beneficiaries are employed in education and research occupations, which account for approximately 6% of approved petitions annually.[48] These roles are critical to scientific advancement yet are inherently lower paid due to budgetary constraints and nonprofit funding models. Weighting lottery odds by wage would effectively redirect H-1B access away from research and toward commercial technology firms—undermining the United States's broader science and research infrastructure.

USCIS's Proposed Registration Provisions Introduce Significant Challenges and Unintended Consequences

Allegedly to prevent manipulation, USCIS proposes that employers who offer positions where the employee will work in multiple locations choose the lowest wage level to which their offered salary corresponds.[49] Likewise, where the offered position could fall into more than one occupational classification, employers are to choose the lowest OEWS wage level to which their offered salary corresponds. Further, another proposed provision would assign each unique beneficiary to the lowest OEWS wage level among all registrations submitted on their behalf. This approach oversimplifies a complex labor market and may steer outcomes away from USCIS's stated goals. Instead of encouraging high-skill, high-wage employment, it discourages investment in top talent.

E. The Proposed Rule Relies on Faulty Wage Level Assumptions and OEWS Data

OEWS Wages Include Comprehensive Compensation Packages while H-1B Program Uses Base Compensation.

Weighting the H-1B lottery based on the highest OEWS wage level that the beneficiary's proffered wage equals or exceeds is deeply flawed because employers are only allowed to use the base wages when complying with wage requirements in the H-1B program.

According to the DOL's Bureau of Labor Statistics, employers providing data for OEWS can include not only the base pay but a range of other types of pay including commission, cost-of-living allowance, deadheading pay, guaranteed pay, hazard pay, incentive pay, longevity pay,

[48] *Cong. Research Serv.*, The H-1B Visa for Specialty Occupation Workers, CRS Report No. IF12912, at 2 (Feb. 18, 2025) (https://www.congress.gov/crs-product/IF12912).

[49] 90 Fed. Reg. at 46019, proposed 8 CFR 214.2(h)(8)(iii)(A)(4)(i).

over-the-road pay, piece rate, portal-to-portal pay, production bonus, and tips.[50] We recognize that all these different types of pay may not be relevant to all occupations, but what is important to note is that the pay considered goes beyond just the base pay. For the H-1B program, however, an employer can only rely on base pay.[51]

The H-1B program excludes substantial components of total compensation that are standard in many high-skill industries, such as stock options, time-based shares, performance-based shares, bonuses, and benefits. In fields like technology, finance, and biotech, top talent is often compensated with significant equity or variable pay, meaning that base salary alone is a poor proxy for skill or value. This is particularly problematic for startups and innovative companies that use equity to attract top global talent, as well as for senior professionals whose total compensation far exceeds the OEWS wage levels but whose base salary may not reflect their true market worth. As a result, the Proposed Rule would systematically disadvantage highly skilled workers and innovative employers who use non-salary compensation to attract talent, while favoring those whose pay is more heavily weighted toward base salary, regardless of actual skill or market value. This undermines the Proposed Rule's stated goal of using compensation as a proxy for skill and could distort the H-1B selection process by failing to reflect the true diversity and competitiveness of U.S. compensation practices.

The Proposed Rule's Reliance on Higher Wages as a Proxy for "High Skill" Is Empirically Faulty Across Industries

While wage levels should be determined based on the skills, education and experience required for the job, the Proposed Rule states that "[a] proffered wage that corresponds with the prevailing wage rate reflecting a higher wage level is generally a reasonable proxy for the higher level of skill required for the position."[52] 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. DOL's OEWS data — from which prevailing wage levels are drawn — aggregate wages across all employers within an occupation, without adjusting for the profit structure, funding model, or public versus private character of the employer.

For example, a first-year associate at a major corporate law firm may earn a starting salary of $235,000, while a first-year attorney at a federal agency or public defender's office may earn less than $75,000. Both positions require the same academic credentials (a J.D. from an accredited law school, bar admission) and often greater skill is required in the public sector, where caseloads are heavier and resources more constrained. Yet under the Proposed Rule, the registration for the government attorney would carry only a fraction of the selection weight of the corporate associate, despite equivalent educational and professional demands.

This disparity is replicated across numerous fields. A biomedical researcher at a public university may earn half the salary of a counterpart in private industry, though both roles require a Ph.D. in

[50] *See* U.S. Bureau of Labor Statistics' Occupational Employment and Wage Statistics (OEWS) Pay Terms, https://www.bls.gov/respondents/oes/payterms.htm#:~:text=Attendance%20bonus,Hazard%20pay.
[51] 20 CFR § 655.731(c)(1).
[52] 90 Fed. Reg. at 45990.

molecular biology and mastery of identical techniques. A civil engineer designing municipal infrastructure is compensated at a lower rate than one working for a private developer, yet both apply the same complex engineering principles and licensure. Thus, Level IV wage thresholds privilege high-margin industries over high-skill occupations.

Cross-Industry Wage Data Are Not Designed to Rank Worker Ability

The OEWS wage survey, on which H-1B wage levels are based, was never intended to measure skill or productivity. Its purpose is statistical — to represent mean and percentile wage distributions within occupational codes. It makes no adjustment for the employer's industry, business model, or regional cost factors. As the Bureau of Labor Statistics itself notes, wage data varies widely even within the same occupation due to factors such as industry, location, experience, education, and employer type, showing that pay differences do not necessarily reflect differences in skill or job complexity.[53] Consequently, Level IV wages in one sector may simply reflect market profitability, while Level I or II wages in another may reflect public funding caps or nonprofit compensation norms. Using these cross-industry metrics to assign selection priority converts a descriptive economic dataset into a normative ranking of "worth," a purpose for which it was never designed or validated.

Geographic Cost-of-Living Disparities Distort Wage Comparisons

Wages also differ substantially by location due to regional cost-of-living variation, not worker skill. A software engineer earning $180,000 in San Francisco may command a Level IV wage due to housing and cost pressures, while a similarly qualified engineer earning $110,000 in Kansas City—a lower cost-of-living region—may fall at Level II despite comparable technical ability and educational background. The Proposed Rule's failure to normalize wages for cost-of-living or purchasing power parity means that selection probabilities would systematically favor beneficiaries in high-cost metropolitan regions, skewing H-1B allocation toward certain geographies rather than merit.

Wage Inflation Reflects Labor Market Conditions, Not Skill Increases

Recent years have seen sector-specific wage inflation, particularly in technology, finance, and law, where compensation has escalated due to market competition rather than measurable increases in skill.[54] Employers in these fields raise salaries to attract scarce talent or respond to competitors, not because each new hire possesses greater expertise. By contrast, industries with rigid salary structures (academia, healthcare, government) cannot engage in similar bidding wars, regardless of the skill level required. A wage-weighted system would therefore reward industries that can inflate salaries fastest, not those that develop or employ the most capable workers. It also risks amplifying short-term economic bubbles — for instance, tech salary spikes driven by venture capital funding — while penalizing stable sectors that offer long-term societal benefit but more modest pay scales.

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[53] Elka Torpey, *Same Occupation, Different Pay: How Wages Vary*, Career Outlook, U.S. Bureau of Labor Statistics, May 2015, https://www.bls.gov/careeroutlook/2015/article/wage-differences.htm.

[54] Eg, *See LawFuel*, *Talent Wars: Legal Firms Engage in Salary Escalation to Attract Top Associates*, (LawFuel) (2025), https://www.lawfuel.com/talent-wars-legal-firms-engage-in-salary-escalation-to-attract-top-associates/.

The Wage-Level Framework Does Not Control for Experience or Career Stage

Level I through IV wages are based primarily on statistical percentiles of pay, not individualized measures of experience. A senior professional in a modestly compensated industry may fall to Level II, while an entry-level hire in a high-paying sector may be classified at Level IV. This inversion undermines the notion that higher wage levels correspond to higher expertise or skill. The proposed weighting system thus 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.

F. The Proposed Rule Would Create Confusion Between the Wage Offered and Wage Leveling under DOL Rules

DOL provides a precise process at 20 CFR §655.10 through which the prevailing wage for a particular position is to be determined. DOL has further provided detailed policy[55] that walks through a mathematical formula by which the required wage level is to be determined.[56] The regulation and guidance are both clear that the job duties and requirements determine the required wage – not the amount that the employer chooses to pay the H-1B worker. Even if an employer chooses to pay a particular worker well over OEWS Wage Level IV, that does not affect the way in which the prevailing wage level is calculated. A software engineering job requiring a bachelor's degree and 2 years of experience is classified at OEWS Wage Level I whether the employer wishes to pay the employee $75,000 per year or $750,000 per year. The employer may pay above the prevailing wage – and many employers in fact do just that – but the prevailing wage is determined based on the job requirements.

The Proposed Rule would inject significant confusion and uncertainty regarding that long-established process. The Proposed Rule would change the language of 8 CFR §214.2(h)(8)(iii)(D)(1) to mandate:

> An H–1B petition filed on behalf of a beneficiary must contain and be supported by the same identifying information and position information, including [Standard Occupational Classification] 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.[57]

The proposed language that "[a]n H–1B petition filed on behalf of a beneficiary must contain and

[55] *See* DOL's Prevailing Wage Determination Policy Guidance, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/NPWHC_Guidance_Revised_11_2009.pdf.
[56] This guidance was updated in November 2009, and for more than 15 years has been the process by which prevailing wage levels are determined.
[57] 90 Fed. Reg. 46020 (Sept. 24, 2025).

be supported by the same identifying information and position information, including SOC code, provided in the selected registration…" is vague. Does this proposed text mean that if a lottery registration is submitted based upon an OEWS Wage Level IV prevailing wage, the "same identifying information and position information" requires that the LCA list the position at OEWS Wage Level IV? Or is the intention to look solely at how the offered wage listed on the registration compares to the OEWS Wage Level for the SOC code selected, and the employer is then to follow the existing DOL regulations and the 2009 Prevailing Wage Guidance to choose the actual prevailing wage to list on the LCA? Conflating OEWS wage levels with offered salary creates confusion regarding the prevailing wage process.

At a 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.

G. The Proposed Rule Departs from DOL's Treatment of Alternative Wage Surveys, Collective Bargaining Agreements, and Various Wage Acts

Use of an alternative wage survey is appropriate when OEWS data does not align with current market-based salaries.[58] The DOL acknowledges that OEWS data is not perfect and can be impacted by sampling/non-response errors (i.e. not enough representative data due to falling survey response rates); time lag and methodology changes (i.e., taking three years for SOC classification changes to be fully implemented); and more recently, problems like the Colorado data suspension in 2024-2025 due to data quality concerns stemming from changes to Colorado's Unemployment Insurance system.[59] An employer has the option to use a wage determined by OEWS or by an alternative wage survey. These are treated as wage sources on par with each other.

However, as the Proposed Rule is written, when an employer uses an alternative wage survey, the H-1B registration is based on how the alternative wage corresponds against the OEWS wage level by the wage alone. No recognition is given to how the wage was determined, i.e., education, experience, or even seniority or complexity of duties involved. Just using the alternative wage to choose an OEWS wage level disregards the fact that the wages are going to be different, while the education, experience, or duties may be comparable. This treatment of the alternative wage option relegates alternative wage surveys to a "second class" position. It is important to recognize that alternative wage surveys do not exist for immigration purposes. Rather, they are used by small, medium, and large employers across industries to set overall company-wide salary scales, primarily to ensure market competitiveness for attraction of American workers. Companies are charged tens of thousands of dollars for access to survey data, and that survey serves as a cornerstone of compensation decisions. The Proposed Rule implies that these surveys -- which are

[58] *See* 20 CFR §655.731(b)(3)(iii)(B).

[59] *See* U.S. Bureau of Labor Statistics (BLS), OEWS Reliability of Estimates, OEWS Research Estimates by State and Industry : U.S. Bureau of Labor Statistics (last visited October 8, 2025); *see also* BLS OEWS Notice Regarding Suspension of Publication of Colorado Occupational Employment and Wage Statistics, Notice Regarding Suspension of Publication of Colorado Occupational Employment and Wage Statistics : U.S. Bureau of Labor Statistics (last visited October 8, 2025).

often based on a more robust and modern approach to data collection and analysis than the OEWS survey – are somehow inferior.

Similarly, in certain circumstances, employers may be required to use wages arising out of collective bargaining agreements or federal laws such as the Davis-Bacon Act or McNamara-O'Hara Service Contract Act. Given that OEWS data is not error-proof and the DOL's regulations allow for an alternative wage survey if certain regulatory criteria are met, or employers are required to use wages that are pre-established by statute or collective bargaining agreements, USCIS should develop a Proposed Rule that treats wages arising out of these alternative sources on equal footing.

H. The Proposed Rule's Regulatory Flexibility Analysis Is Flawed and Incomplete

The Regulatory Flexibility Act (RFA), 5 USC §601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[60] requires federal agencies to assess the impact of a regulatory action on small businesses and other small entities, and to minimize any significant economic effects. USCIS's analysis accompanying the Proposed Rule appears incomplete and insufficient to satisfy the analytical standards of the Small Business Regulatory Enforcement Fairness Act.[61] While DHS acknowledges that approximately 76% of H-1B petitioning entities[62] are small businesses and that roughly 30% will experience a significant economic impact,[63] the agency minimizes this result by failing to examine distributional effects among industry sectors, geographic regions, or business models dependent on entry- or mid-level professional workers.

The NPRM states: "This proposed rule would also benefit applying for higher-earning employees who would be weighted at Level IV or Level III as they would have a greater chance of their employees being selected compared to the current random selection process."[64] The regulatory flexibility analysis fails to identify the magnitude and scope of impact on small entities and fails to present feasible alternative frameworks as required by 5 U.S.C. § 603(c). If the Proposed Rule is not withdrawn, as AILA and the Council urge, then a revised analysis by USCIS should incorporate empirical data by industry and firm size, model the cumulative cost and opportunity loss, and explicitly assess flexible approaches that maintain program integrity while avoiding disproportionate harm to small U.S. employers.

I. USCIS Should Extend the Comment Period to 60 Days for Meaningful Input from the Regulated Public

Providing a 30-Day Comment Period Undermines the Purpose of the Administrative Procedure Act (APA) by Preventing Stakeholders from Having a Meaningful Opportunity to Comment

As noted in a prior comment submitted by AILA and the Council, the 30-day comment period

[60] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).
[61] 5 US.C. §601 et seq.
[62] 90 Fed. Reg. at 46015.
[63] 90 Fed. Reg. at 45999.
[64] 90 Fed. Reg. at 46016.

provided for this rule does not permit a meaningful opportunity to comment.[65] The APA requires that agencies provide the public with a "meaningful opportunity to comment," typically *a minimum of 30 days*, although it is much more common to *allow 60 days*. Accordingly, we are deeply concerned that the 30-day comment period provided is insufficient to satisfy the requirements of the APA, 5 U.S.C. §553, established administrative practice as well as Executive Order 12866, which states that agencies should provide at least 60 days for public comment on significant regulatory actions. USCIS designated this Proposed Rule as "a 'significant regulatory action' that is economically significant under section 3(f)(1) of Executive Order 12866."[66] The Administrative Conference of the United States has likewise urged agencies to allow a minimum of 60 days for complex or economically significant proposals.

The unjustified, minimal comment period will deprive the agency of receiving the full perspective of those stakeholders and interested parties most likely to be materially impacted by the Proposed Rule. Given the scope, impact, and complexity of the Proposed Rule, we believe a 30-day window is legally insufficient to ensure meaningful participation.

Scope, Impact and Complexity of the Proposed Rule

The Proposed Rule spans more than thirty-five pages in the Federal Register and introduces a new, weighted H-1B registration selection system that will not only severely impact U.S. global competitiveness but also will have profound business ramifications across virtually all business sectors and geographies. The Proposed Rule's discussion of costs omits national-level economic and employer-specific effects due to the complexity of variables involved.[67] It has an oversimplified explanation of the new weighted system. Evaluating this information requires careful study of complex data tables and consultation with experts to analyze and comment upon the data. A 30-day period does not allow stakeholders to adequately conduct this review and prepare informed, evidence-based comments.

Inadequate Administrative Record

An inadequate comment period weakens the administrative record by limiting the number and quality of substantive submissions, potentially rendering the subsequently issued final rule as "arbitrary and capricious" and increases the likelihood that a reviewing court could vacate or remand the rule.[68] As the Proposed Rule is a significant regulatory action with substantial economic impact and is inherently technically complex and controversial, there is no reason to limit the public comment period to less than the 60-day timeframe provided in Executive Order 12866.

As noted in the Proposed Rule, "[t]he effects of this rulemaking on any given employer would

[65] *See* https://www.regulations.gov/comment/USCIS-2025-0040-1499.
[66] 90 Fed. Reg.note 1 at 45996.
[67] *See* comment (https://www.regulations.gov/comment/USCIS-2025-0040-1681 to DHS) from Michael Clemens, Jeremy Neufeld, Amy Nice filed at Regulations.gov.
[68] Agencies cannot cut procedural corners in a way that undermines meaningful public participation or reasoned decision making. See, Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29 (1983); National Lifeline Association v. FCC, 921 F.3d 1102 (D.C. Cir. 2019). For example, limiting the comment period to 30 days primarily for political reasons, such as rushing to implement a restrictive final rule before an important annual filing period, would be arbitrary and capricious and directly violate the APA.

depend in part on the interaction of a number of complex variables that constantly are in flux…."[69] Smaller employers (typically with smaller budgets) that rely upon foreign born talent to serve in key roles critical to core business operations may have neither the resources nor the capacity to analyze the complex variables referenced above and respond in the shortened comment period. Even for larger employers, commenting on the full impact of the Proposed Rule in 30 days is a daunting task. For smaller employers, providing a comprehensive analysis of the effect, and foreseeable and unforeseeable consequences, of the rule in 30 days may be an impossibility. Again, the abbreviated comment period for this Proposed Rule impedes participation by precisely those entities most likely to be significantly impacted by the proposed changes to the H-1B selection process.

A minimum 60-day comment period would allow more stakeholders to carefully examine the Proposed Rule, providing USCIS with essential information and data to: consider the scope of related issues, assess unintended consequences, and prevent potential waste of resources. Extending the comment period would enhance the quality of public input and support the agency's commitment to transparency, informed decision-making, and regulatory fairness. We make this request so that the public may have a meaningful opportunity to comment on the significant proposed regulatory changes, economic impact, and burden on those affected by the proposed changes.

The Proposed Rule's impact on broad segments of the economy necessitates that the public be afforded no less than 60 days to provide meaningful comment on the proposed regulatory changes. For the reasons above, we respectfully request that the agency extend the comment period for this Proposed Rule to at least 60 days. This extension will improve compliance with APA notice and comment requirements, improve the quality of the administrative record, and address obvious areas for judicial challenge.

J. USCIS Should Delay Implementation Until At Least The FY2028 H-1B Cap Filing Season

With the many changes rolling out for H-1B petitions in recent months, including the White House Proclamation regarding a $100,000 fee, U.S. employers are scrambling to adjust and prepare for the upcoming FY2027 H-1B cap-filing season. As previously mentioned in our comments to the NPRM in 2019, U.S. employers start preparing for the H-1B cap filing season months in advance, in some cases as early as August depending on the industry.

Any changes by USCIS to the H-1B cap filing process this late in the process, particularly as significant as the changes proposed in this Proposed Rule, would unfairly harm U.S. employers and other stakeholders. Relying on the existing process and regulations, U.S. employers and prospective workers are utilizing processes related to recruitment and hiring. Many U.S. employers have established processes relating to the preparation and filing of H-1B registrations and petitions. It would be unfair and arbitrary to expect stakeholders to completely upend these processes with short notice. Therefore, if USCIS were to finalize this poorly justified Proposed Rule, a minimum implementation should be delayed until the FY2028 H-1B cap filing season, but USCIS should

[69] 90 Fed. Reg. at 46009.

provide a minimum of six months in advance of any H-1B registration period. U.S. employers need time to adapt their recruitment procedures, hiring process, and filing process to the new selection process. This will minimize the cost of the Proposed Rule for U.S employers, immigration attorneys, and the agency itself.

K. Conclusion

High-skilled immigration is a key component of the ongoing ability of the United States to hire and retain global talent needed to drive innovation and create jobs in the United States. Foreign workers fill a critical need in the U.S. labor market in smaller employers, nonprofits, health care, research, higher education, innovators, and work in STEM fields. Research shows that H-1B workers complement U.S. workers, fill employment gaps in many STEM occupations, and expand job opportunities for all.[70] Yet the agency's proposal, which is based on the false premise that wage levels alone equates with one's value to our economy and society, is *ultra vires* and would be damaging to the economic success of our nation. For the reasons addressed above, AILA and the Council strongly oppose this Proposed Rule and urge DHS/USCIS to withdraw it.

Respectfully submitted,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

AMERICAN IMMIGRATION COUNCIL

[70] *Id*.