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Samantha Deshommes
Chief, Regulatory Coordination Division
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20588-0009

Re: DHS Docket No. USCIS-2026-0298; RIN 1615-AD20
"Fee for Certain H-1B Petitions," 91 Fed. Reg. 54817 (Aug. 25, 2026)

Dear Ms. Deshommes:

The U.S. Chamber of Commerce ("the Chamber") respectfully submits these comments on the Department of Homeland Security's ("DHS") proposed rule that would impose a $103,265 fee on every H-1B petition subject to the annual numerical quota (the "Proposed Rule").[1] The Chamber is the world's largest business federation, representing businesses of all sizes, sectors and regions, including employers whose collective experiences with the H-1B program support the concerns set forth below. We share the Department's goal of ensuring the integrity of the H-1B visa program. We believe that goal is best advanced through targeted compliance and enforcement measures, rather than a prohibitive fee structure that renders the program inaccessible to the vast majority of American employers who use the H-1B program as intended by Congress.

The concerns raised herein, if unaddressed, could undermine both the legality and effectiveness of the Proposed Rule. Specifically, the comments below identify questions regarding the rule's statutory authority, its relationship to fee structures that federal courts have found legally problematic, the adequacy of its economic analysis, its failure to account for differences among

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[1] Fee for Certain H-1B Petitions, 91 Fed. Reg. 54817 (Aug. 25, 2026) (hereinafter "Proposed Rule" or "NPRM").

petition types, its disproportionate impact on small and mid-sized employers, and the insufficiency of the comment period provided.

The Chamber and the broader business community stand ready to work collaboratively with the Department to advance the shared goals of program integrity and worker protection while retaining American employers' ability to grow, innovate, and create the jobs and opportunities that benefit American workers and their families.

Discussion

I. The Proposed Fee Undermines U.S. Competitiveness and Productivity.

A. The Economic Analysis Is Inadequate and Internally Inconsistent.

The Proposed Rule's regulatory impact analysis focuses narrowly on projected fee revenue and employer "willingness to pay" while failing to account for the rule's most significant real-world consequences, including demand collapse, talent flight, offshoring, and broader macroeconomic harm.[2]

The evidence of demand reduction is strong. DHS acknowledges that the related $100,000 proclamation payment resulted in a decline of more than 90% in consular H-1B receipts,[3] yet the Proposed Rule's economic analysis is silent on how a charge of this magnitude will affect filing behavior across the full range of employers. DHS further ignores the complementary role H-1B workers play in the domestic economy. Peer-reviewed research has found that foreign STEM workers spur productivity growth, raise wages for college-educated native workers, and generate additional domestic employment, with one study finding that every 100 additional H-1B workers supported 183 additional U.S.

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[2] 91 Fed. Reg. 54817.

[3] U.S. Dep't of Homeland Security, Technical Appendix to Fee for Certain H-1B Petitions NPRM (2026) ("From September 21st, 2025 through May 24th, 2026, USCIS received 91.2% fewer initial consular Form I-129 H-1B petitions relative to the same time frame in the previous year."), quoted in Stuart Anderson, DHS Omits Describing H-1B Data Undermining Premise Of Immigration Rule, Forbes (Aug. 26, 2026).

jobs.[4] DHS's analysis treats H-1B workers as labor substitutes rather than productivity inputs, a premise the economic literature does not support.[5]

The economic contribution of H-1B workers extends well beyond the individual employer. The largest H-1B-dependent companies generate substantial corporate tax revenues, significant shares of state GDP, and large numbers of non-H-1B jobs, and sustain the United States' reputation as a meritocratic, open economy that rewards talent, attracts global investment, and encourages entrepreneurship. DHS's economic analysis accounts for none of these effects.

DHS's demand projections rest on a single computer simulation, not observed employer behavior, that assumes values for productivity gains, hiring costs, and employer willingness to pay, then concludes that filing volumes will hold steady at 85,000 visas per year.[6] Assumptions are not evidence. The agency's projection of 85,000 annual cap-subject petitions is central to its own $8.8 billion revenue calculation and has no empirical foundation.[7]

The proposed fee is also a blunt instrument that makes no meaningful distinctions among employers or positions and supports a structure that is more likely to drive away legitimate employers than to deter bad actors. It affects employers who pay competitive wages the same as those who underpay, treats a cutting-edge research role the same as a routine position, and applies equally to compliant employers and those with a history of

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[4] Giovanni Peri, Kevin Shih & Chad Sparber, STEM Workers, H-1B Visas, and Productivity in US Cities, 33 J. Labor Econ. S225 (2015).

[5] Madeline Zavodny, Immigration and American Jobs 4, 6 (American Enterprise Institute & Partnership for a New American Economy, Dec. 2011); Douglas Holtz-Eakin, The H-1B Workforce and the Future of American Innovation, American Action Forum (Nov. 30, 2023).

[6] *See* 91 Fed. Reg. 54835–36 (citing George J. Borjas, "The H-1B Wage Gap, Visa Fees, and Employer Demand," NBER Working Paper 34793 (Feb. 9, 2026), https://doi.org/10.3386/w34793) (DHS's demand analysis relies on a simulation model estimating willingness to pay based on unobserved productivity assumptions).

[7] *See* 91 Fed. Reg. 54836 ("DHS expects the annual filing volume of cap-subject H-1B receipts under the proposed rulemaking would be 85,000 . . . . Consequently, DHS expects the fee would result in petitioners properly filing 85,000 cap-subject H-1B petitions requiring the $103,265 fee each year.").

violations, ultimately discouraging hiring, investment, and growth while doing little to address the program abuses it purports to remedy.

DHS should also assess whether the combined regulatory and fee burden materially changes employers' decisions about whether and where to hire high-skilled workers. The NPRM itself acknowledges at least six concurrent or pending rulemakings affecting H-1B petitioners yet analyzes each in isolation.[8] Without considering these foreseeable effects, DHS cannot meaningfully assess the Proposed Rule's benefits and costs, compare the proposal with less burdensome alternatives, or determine whether the fee would advance its stated objectives.

B. The Fee Disproportionately Harms All Employers, Including Small and Medium-size Employers.

A flat, per-petition fee of $103,265 bears no relationship to employer size, revenue, or petition complexity. DHS's own Initial Regulatory Flexibility Analysis acknowledges that the fee would impose a cost exceeding 1% of annual revenue on approximately 11,051 small entities, representing 76% of all small entities that filed cap-subject petitions in FY 2025.[9]

Under the agency's own definition, a cost impact greater than 1% of annual sales revenue constitutes a "significant economic impact" for purposes of the Regulatory Flexibility Act ("RFA"). Yet having identified that three-quarters of small filers would face a fee that meets its own threshold for significant harm, the NPRM provides no meaningful alternative. The NPRM reasons that exempting or discounting fees for small entities would create "a sizable perverse incentive for employers to avoid the fee."[10] That rationale, offered without supporting data, modeling, or analysis of less restrictive alternatives, does not satisfy the agency's obligation under the RFA to consider

[8] 91 Fed. Reg. 54837 (DHS's acknowledgment of overlapping rulemakings).
[9] 91 Fed. Reg. 54835.

[10] 91 Fed. Reg. 54836.

"significant alternatives" that would "minimize any significant impact of the proposed rule on small entities."[11]

Indeed, DHS's own numbers necessitate a more precise response than a single conclusory sentence on the risk of avoiding the fee. The practical effect is that startups, regional employers, hospitals, and small businesses, which often sponsor only one or a few H-1B workers at a time, would be effectively priced out of the program. This is a government-created barrier to competition and innovation that the RFA requires DHS to address with workable alternatives.

The harm, of course, is not limited to only small and mid-sized employers. Large employers that rely on the H-1B program to fill specialized roles, including in defense, aerospace, advanced manufacturing, and other sectors critical to national security and economic competitiveness, would also face a dramatically altered hiring calculus. A fee of this magnitude would significantly influence how even large employers utilize the H-1B program, potentially reducing filings, shifting workforce planning, and limiting access to specialized talent that cannot be readily sourced domestically. Capital diverted to this fee is capital unavailable for employee benefits, research and innovation, and creation of more American jobs.

The impact is particularly severe for Chamber members that operate under government or commercial contracts, where clients cannot be expected to absorb a $103,265 per-petition fee as a pass-through cost. For these employers, the fee effectively eliminates the H-1B program as a viable talent-acquisition tool, regardless of employer size, and redirects resources that would otherwise support American workers and their families toward a government revenue mechanism that does nothing to improve program integrity.

C. The Proposed Fee Threatens the U.S. Talent Pipeline and National Competitiveness.

International students represent approximately 56% of enrollment in computer science master's programs at top U.S. institutions, concentrated in

[11] 5 U.S.C. § 604(a)(6).

the AI subspecialties where U.S. companies report the most acute talent shortages: machine learning, natural language processing, and computer vision.[12] Indeed, U.S. employers are struggling to fill AI and data roles requiring specialized expertise, and the domestic talent pool is not keeping pace.

Furthermore, the proposed fee applies per petition regardless of salary, seniority, or role, making sponsorship economically indefensible for early-career engineers and research scientists at small and mid-sized technology companies. If the rule takes effect as proposed, it would limit significantly, if not eliminate, the qualified candidate pipeline for these positions, making it very difficult for employers to meet business demand and keep pace with a rapidly evolving technological landscape. When critical roles go unfilled and projects stall, American jobs disappear.

Meanwhile, competitor nations are actively recruiting the U.S.-educated graduates this fee would displace. Canada has committed approximately $1.7 billion to attract global technology talent, with a two-week processing time for an accelerated permanent-residency pathway targeting 33,000 workers by 2027.[13] Germany has shortened its path to permanent residency and expanded its Opportunity Card program.[14] The United Kingdom offers a Global Talent Visa with a dedicated endorsement route for digital technology and artificial intelligence.[15]

Early data confirm the stakes. USCIS recorded an 87% drop in H-1B cap-subject filings in the months after the earlier $100,000 supplemental fee took

[12] National Foundation for American Policy, "International Students in STEM Master's Programs" (2024).

[13] Government of Canada, Budget 2025: *A Strong Middle Class*, ch. 4 (2025).

[14] Federal Republic of Germany, Skilled Immigration Act (*Fachkräfteeinwanderungsgesetz*), as amended (2024).

[15] UK Visas and Immigration, Global Talent Visa: Digital Technology Endorsement Route (2024), available at gov.uk.

effect.[16] When U.S.-trained graduates take jobs abroad, the return on America's investment in their education flows directly to competitor economies.

In sum, a fee structure that filters talent by cost rather than merit undermines U.S. technological leadership—a national-competitiveness dimension largely absent from DHS's cost-recovery analysis and one that should be part of the record.

II. DHS Lacks Legal Authority to Impose the Proposed Fee.

A. Immigration Fees Must Reflect Only Cost to the Agency.

Any fee associated with an H-1B petition must be limited to the actual cost of adjudicating that petition. The proposed fee far exceeds that bound. Section 286(m) and (n) of the Immigration and Nationality Act authorizes fees to recover "the full costs of providing" immigration adjudication and naturalization services—nothing more.[17] It does not authorize DHS to create an $8.8 billion annual revenue mechanism to finance agencies and programs far removed from H-1B adjudication. Yet that is precisely what the Proposed Rule does:[18]

- $3 billion to USCIS, not specifically for H-1B adjudication, but for new facilities, pay increases, and a "Voter Verification System";
- $3 billion to the Executive Office for Immigration Review (EOIR), the agency that houses the U.S. Immigration Court which hears removal (deportation) cases;
- $1 billion to Immigration and Customs Enforcement (ICE) and $76 million to Customs and Border Protection (CBP), which are general enforcement agencies with no role in adjudicating H-1B petitions;
- $1.2 billion to the Department of Labor and $484 million to the Department of State.

Two-thirds of the projected revenue would fund agencies and programs outside USCIS, many entirely unrelated to H-1B adjudication and otherwise

[16] *See* 91 Fed. Reg. at 54835; *see also* DHS analysis of $100,000 proclamation payment filing data.

[17] 8 U.S.C. § 1356(m), (n).

[18] 91 Fed. Reg. at 54820–24.

supported by their own user fees or congressional appropriations. DHS's own preamble acknowledges it has "generally exercised this authority by focusing fee recovery on costs incurred by USCIS," [19] yet departs from that practice here without adequate statutory justification. Section 286(m) and (n) limit the delegation and do not provide a general revenue power.[20]

DHS further concedes it has "never" before transferred costs from one program to another based on relative ability to pay.[21] A user fee must bear a reasonable relationship to the government service actually provided—not to the agency's assessment of what a particular group can absorb. DHS has not explained why one narrow class of employers should bear billions of dollars in costs unrelated to the benefit they are requesting, rather than funding those activities through appropriations or distributing legitimate system-wide costs across a broader base of immigration users.

B. The Proposed Rule Fails to Consider Less Burdensome Alternatives.

Even within the parameters of Section 286(m) and (n), DHS is obligated under the Administrative Procedure Act to consider reasonable alternatives before adopting a rule of this magnitude.[22] The NPRM's treatment of alternatives, a single paragraph at 91 Fed. Reg. 54837 dismissing small-entity relief on avoidance grounds, does not satisfy that standard.[23]

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[19] *Id.*

[20] Opening Brief for Appellants at 24, Chamber of Commerce of the United States of America v. U.S. Dep't of Homeland Security, No. 25-5473 (D.C. Cir.) (hereinafter "Opening Br.").

[21] 91 Fed. Reg. 54821 ("While, in appropriate circumstances, DHS has considered the relative ability of different fee-paying populations to bear unrelated costs, we have never directly transferred the costs of one program to another based on a determination that requestors under one program can afford higher fees more than other general or specific requestors.").

[22] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must consider reasonable alternatives). Policy objectives include fraud prevention, interagency coordination, and labor standards enforcement.

[23] See 91 Fed. Reg. 54837.

As such, even within a lawful cost-recovery framework, workable and less burdensome alternatives exist that DHS does not explore. Examples of such alternatives are:

- A sliding-scale fee tied to employer size and location;
- Exemptions for occupations with documented talent shortages or national interests;
- A reasonable phase-in schedule that allows employers to adjust recruiting pipelines and workforce plans already underway; and
- Exemptions for beneficiaries (employees) who accepted offers prior to the rule's publication date.

C. The Proposed Fee Raises "Major Questions" Concerns.

Congress established the H-1B quota, the advanced-degree exemption, and a detailed statutory fee structure, including a training fee and fraud-prevention fee that already fund related activities.[24] Congress did not clearly authorize DHS to layer a $103,265 charge on top of that structure to finance unrelated federal programs. Under the Major Questions Doctrine, DHS must point to "clear congressional authorization" for a rule of this economic and political significance.[25] It has not done so.

The Homeland Security Act reinforces this conclusion. In dismantling the former Immigration and Naturalization Service, Congress deliberately separated immigration benefits adjudication from immigration enforcement, assigned adjudicative functions to USCIS and enforcement functions to separate agencies, required separate accounts and budgets, directed that fees imposed for a particular service be deposited in the account of the bureau with jurisdiction over that function, and restricted fee transfers between the benefits and enforcement components of DHS except as otherwise authorized by law.[26]

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[24] 8 U.S.C. §§ 1184(g)(1) (H-1B cap); 1184(g)(5)(C) (advanced-degree exemption); 1356(s) (ACWIA training fee); 1356(v) (fraud prevention and detection fee).

[25] *West Virginia v. EPA*, 597 U.S. 697, 723 (2022).

[26] *See* 6 U.S.C. § 291(b) (anti-recombination provision); 6 U.S.C. § 296(a)–(d) (separation of funding, separate accounts, separate budgets, function-specific fee deposits, and transfer restrictions).

The Proposed Rule ignores that framework. DHS proposes collecting a fee triggered by the filing of a cap-subject H-1B petition with USCIS and using substantial portions of the resulting revenue to fund activities conducted by ICE, CBP, EOIR, the Department of State, and the Department of Labor, thus converting an H-1B visa petition adjudication fee into a government-wide funding mechanism.

Moreover, when Congress has wanted H-1B-related fees distributed among multiple agencies, it has said so expressly. Congress has repeatedly prescribed the allocation of H-1B-related revenues by statute, including the H-1B Nonimmigrant Petitioner Fee and the Fraud Prevention and Detection Fee, demonstrating that interagency distribution of H-1B fee revenue occurs pursuant to express congressional direction, not agency discretion.[27] The present proposal identifies no comparable congressional authorization. DHS may not rely on the general fee-recovery language in Section 286(m), (n), and the reimbursement language in that section to override the more specific institutional and funding safeguards enacted by Congress in the Homeland Security Act.

D. The Proposed Fee Raises Constitutional and Statutory Concerns.

The legal foundation of the Proposed Rule is, at best, unsettled. DHS's own preamble acknowledges that the proposed $103,265 fee is "close to" the $100,000 proclamation payment, a charge already vacated by a federal court as an unauthorized tax imposed without congressional action.[28] Recently, the U.S. District Court in Massachusetts granted summary judgment for plaintiff states, finding the payment functioned as a tax the Executive Branch lacked authority to impose and that implementing guidance was adopted without APA

[27] *See* 8 U.S.C. § 1184(c)(9) (H-1B Nonimmigrant Petitioner Fee); Pub. L. 108-447, Div. J, Title IV, § 426 (Fraud Prevention and Detection Fee).

[28] 91 Fed. Reg. at 54819.

notice-and-comment. The First Circuit declined to stay that ruling, finding the government had not demonstrated a likelihood of success on the merits.[29]

The U.S. Supreme Court also reinforced this concern when it held that the Administration's use of the International Emergency Economic Powers Act ("IEEPA") to unilaterally impose tariffs was unlawful, as the power to tax is reserved exclusively to Congress under Article I of the U.S. Constitution and cannot be delegated through ambiguous statutory language.[30]

DHS therefore must explain with specificity how the $103,265 figure was independently derived from lawful cost-recovery principles under INA § 286(m), (n) and not reverse-engineered to approximate an amount a court has already struck down.[31] Any final rule should also include a clear refund and transition mechanism to protect petitioners should the rule later be vacated.

III. The 30-Day Comment Period Is Inadequate

The Chamber respectfully urges DHS to extend the comment period by an additional 60 days to a total of 90 days from Federal Register publication. The compressed timeline is not merely inconvenient; it is structurally incompatible with the complexity and economic magnitude of the Proposed Rule, and risks a final rule built on an incomplete record.

DHS estimates $8.8 billion in annual economic impact, placing this rule among the most consequential federal regulatory actions. Executive Order 12866 contemplates a 60-day comment period as the norm for "economically significant" rules. DHS has provided half that time. This deficiency is compounded by the extraordinary analytical demands this rule imposes.

The Proposed Rule presents at least three interlocking layers of complexity that cannot be meaningfully addressed in 30 days: a novel interagency cost-

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[29] *State of California v. Mullin*, No. 1:25-cv-11231 (D. Mass. June 8, 2026) (order granting summary judgment); Order Denying Stay, No. 26-1320 (1st Cir. July 24, 2026).

[30] *Learning Resources, Inc. v. Trump*, 607 U.S. ___ (Feb. 20, 2026).

[31] Reply Brief for Appellants at 18, Chamber of Commerce v. DHS, No. 25-5473 (D.C. Cir.) (hereinafter "Reply Br.").

allocation model with no regulatory precedent, requiring stakeholders to reconstruct the agency's methodology and develop alternative frameworks; serious unresolved statutory-authority questions spanning multiple INA provisions that require careful legal briefing; and empirically contestable demand-elasticity assumptions requiring evidence-based rebuttal, meaning stakeholders must gather original data, not merely react to DHS's.

The H-1B cap registration calendar compounds the problem. Employers and universities need adequate time to assess the rule's impact on hiring plans, small-entity compliance burdens, and registration participation before the next cycle opens. Rushing comments produces a thinner record that is more vulnerable to legal challenge and less reflective of real-world impact.

The Chamber first raised these concerns on August 26, 2026. That request was not accommodated. The Chamber renews its request for 60 additional days, 90 days in total, for stakeholders to submit constructive comments.

Conclusion

The Chamber respectfully urges DHS to withdraw the Proposed Rule. At a minimum, DHS should extend the comment period and engage in a more deliberate rulemaking process grounded in clear statutory authority, supported by a complete and internally consistent economic analysis, and designed to distribute costs in a manner that does not effectively exclude small and mid-sized employers from a program Congress created to serve them. The concerns raised above go to the legal foundation, economic integrity, and practical workability of the rule as proposed, and not merely the amount of the fee.

The Chamber and its members remain committed partners in advancing program integrity, worker protection, and a lawful immigration system that serves the national interest. We stand ready to work with DHS to develop a fee structure that recovers legitimate costs through lawful means, reflects meaningful differences among petition types and employer circumstances, and preserves American employers' ability to compete and innovate. We respectfully request that DHS extend the comment period, publish the full cost-allocation methodology, and engage substantively with the concerns raised herein before proceeding to a final rule.

Respectfully submitted,

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