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Brian Pasternak, Administrator
Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Via electronic submission: www.regulations.gov

RE: Comment on Notice of Proposed Rulemaking
Improving Wage Protections for the Temporary and Permanent
Employment of Certain Foreign Nationals in the United States.
Docket No. ETA-2026-0001.

Dear Mr. Pasternak:

The U.S. Chamber of Commerce respectfully submits its comments to the Department of Labor's (Department or DOL) Notice of Proposed Rulemaking (NPRM), published on March 27, 2026, proposing substantial revisions to the methodology used to calculate prevailing wages for the H-1B, H-1B1, E-3, and Permanent Labor Certification (PERM) programs.[1] The NPRM would dramatically increase each of the four Occupational Employment and Wage Statistics (OEWS) wage levels by approximately 17 to 21 percentile points.[2] The NPRM states that these changes would increase required wages by an average of approximately $14,000 per sponsored worker annually.[3] Critically, DOL's statutory mandate is to compute prevailing wages, but its proposal bears little connection to actual market wages.

These proposed changes constitute one of the most consequential shifts to the employment-based immigration system in decades. By imposing steep increases that do not reflect market wages *and* doing so without a phased approach, the rule creates

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

[2] *Id.* at 15460–15463.

[3] *Id.* at 15466.

substantial operational and financial planning challenges, particularly in recalibrating compensation structures, budget forecasts, and long-term workforce strategy. Meaningful compliance would require sufficient time to reassess compensation bands, adjust internal pay frameworks, renegotiate existing offers where necessary, and reevaluate sponsorship strategies, especially for early-career and highly specialized roles. An accelerated transition from finalization to implementation would leave employers—both large technology firms with complex compensation systems and small employers with limited resources—with little practical ability to execute these changes in a timely and compliant manner.

Of course, even with a phased approach, the proposed new wage levels are disconnected from labor market realities. DOL states that the change is necessary to align prevailing wages more closely with those of "similarly employed" U.S. workers, but it seems to be satisfied with classifying workers as "similar" based solely on occupation and geography without considering any data on Americans employed with similar education and experience. In addition, DOL does not explain how the existing framework fails to meet the statutory non-adverse-effect standard. Moreover, the NPRM does not provide any empirical basis for the specific percentile increases, and the increases are not reasonably tailored to solve the problem the Department seeks to address through this NPRM.

As discussed below, the NPRM incorrectly relies on mechanical wage escalation untethered from experience, job duties, or labor market realities. As with a similar proposal from 2020, this NPRM fails to consider less disruptive alternatives.[4] Independent empirical analyses further confirm that the NPRM's percentile-based methodology is ill-suited to achieving the Department's stated objectives.[5]

For these reasons, the Department should withdraw the NPRM and work with the business and enforcement compliance communities to create a system that in fact protects American workers without impeding innovation and productivity.

Discussion

I. Statutory Framework and the Purpose of Prevailing Wages

The Immigration and Nationality Act (INA) requires that the employment of foreign workers through temporary and permanent visa programs not "adversely affect the

[4] U.S. Chamber of Commerce, *Comments on DOL High-Skilled Wage Rule* (Nov. 9, 2020).

[5] Institute for Progress, *A Prescription for Fixing the Prevailing Wage System* (Mar. 27, 2026).

wages and working conditions of workers in the United States similarly employed."[6] The INA authorizes DOL to prevent wage suppression, but it does not permit the imposition of wage floors untethered from workers' experience, education, or actual labor market conditions. DOL does not account meaningfully for experience and education as the statute requires. Instead, it relies on generalized assumptions about labor markets rather than concrete evidence—an approach made especially problematic when its methodology aggregates disparate data that obscure real-world distinctions.

Historically, DOL implemented this mandate through a four-tier prevailing wage structure based on OEWS data, designed to approximate differences in experience, responsibility, and skill within occupations. The purpose of the prevailing wage system is not to mandate parity with median or upper-quartile wages for all positions, but rather to ensure that foreign workers are not used to undercut U.S. wages while preserving a functioning labor market for entry level, early career, and specialized roles.[7]

Nothing in the INA directs DOL to pursue wage maximization or to move wages toward the upper end of the distribution as a matter of policy. By doubling the percentile threshold for entry-level wages and shifting senior-wage levels to near-top-decile values, the NPRM effectively is making assumptions based on policy objectives and not economic data. The new rule would transform a non-adverse-effect safeguard into a wage-elevation mandate that is inconsistent with the intent of the INA.

II. Departure from Longstanding Policy and Reliance Interests

Relying on the longstanding four-tier OEWS wage system, employers across sectors—including universities, research institutions, healthcare providers, startups, and nonprofits—have structured compensation frameworks, hiring pipelines, and multi-year immigration sponsorship strategies around a stable and predictable methodology. These established practices create substantial reliance interests, particularly where workforce planning and permanent residence processes span several years and involve significant committed resources. Abrupt, across-the-board changes to prevailing wage calculations would therefore impose severe disruption and impose costs that cannot be readily absorbed or reversed.

[6] 8 U.S.C. § 1182(n)(1)(A).

[7] *ITServe Alliance, Inc. v. DHS*, 85 F.4th 114, 118 (D.C. Cir. 2023).

The NPRM neither considers meaningfully nor explains why these reliance interests should be set aside in favor of immediate, dramatic wage increases. Although DOL acknowledges that the proposal would significantly raise labor costs, it fails to justify proceeding without a reasonable transition. At a minimum, the agency should adopt phased implementation or targeted adjustments to mitigate disruption and allow employers sufficient time to adapt longstanding compensation and workforce strategies, consistent with its obligation to account for reliance interests when changing policy.[8]

III. Arbitrary and Overinclusive Percentile Escalation

The NPRM proposes to recalibrate all four prevailing wage levels by assigning them to higher percentiles of the OEWS wage distribution, asserting that this shift would better align wages with those earned by similarly employed U.S. workers. However, it offers little explanation or evidence that the selected benchmarks—the 34th, 52nd, 70th, and 88th percentiles (up from the 17th, 34th, 50th, and 67th, respectively)—actually correspond to workers with comparable experience, education, or job responsibilities. Instead, the proposal appears to start with a desired outcome of higher benchmark wage levels and then reverse-engineer percentile assignments to reach that result, rather than grounding the recalibration in data reflecting comparable market wages for comparable U.S. jobs. [9]

More broadly, the NPRM relies only on occupation-level wage distributions, failing to account for critical factors such as experience, education, or job responsibility. As a result, workers with materially different qualifications may be treated as similarly situated solely because they share an occupational classification. For example, an entry-level worker in a high-wage metropolitan area may be benchmarked to higher percentile earners within the same occupation despite having fewer credentials or less experience. Although DOL acknowledges that education and experience influence wages, the uniform percentile shifts proposed in the NPRM do not meaningfully account for these distinctions.[10] This approach relies on a single statistical benchmark (such as the OEWS mean) and fails to reflect how wages are actually set in the labor market, where compensation varies significantly by firm, niche specialization, industry segment, and individual worker attributes (e.g., skills, experience, and performance).

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[8] *Encino Motorcars, LLC v. Navarro,* 579 U.S. 211, 222 (2016) (unexplained inconsistency and a failure to account for reliance interests render agency action arbitrary and capricious.).

[9] *Id.*

[10] 91 Fed. Reg. at 15457-8, 70.

By imposing standardized assumptions across all occupations and programs, the approach ignores legitimate, market-based factors.

According to the NPRM, DOL "believes that the lower end of the OEWS wage distribution includes workers who are not appropriate comparators to the population of workers employed through these programs, including workers who may lack the education, training, or experience typically required."[11] However, the NPRM provides no basis for DOL's belief. Because OEWS data do not capture education, credentials, or experience, DOL's analysis must—but does not—include additional data to validate that the 34th percentile for entry-level workers meets minimum requirements for employment-based visa programs. Moreover, DOL's explanation cannot justify the same steep increases for unskilled EB-3 workers, who unlike H-1B and H-1B1 workers do not have minimum credential requirements.

As discussed earlier, the statute cannot justify this higher standard, exceeding the non-adverse effects, and the NPRM correctly concedes this may be the case for EB-3s. While consistency is an important objective, the NPRM would benefit from additional analysis explaining why a single percentile-based methodology is appropriate across programs and occupations with differing educational pathways, skill requirements, and labor market dynamics.

Independent analyses raise additional concerns with this single percentile-based approach. A study by the Institute for Progress characterizes reliance on occupational percentiles without adjustment for experience or qualifications as "blind benchmarking," in which wage floors are tied to relative position within an occupational distribution rather than to characteristics that typically drive wage differentiation. Using experience-linked wage data, the study finds that percentile-based and experience-based benchmarks reach different conclusions about market alignment in a substantial share of cases. The best available evidence does not support the NPRM's chosen percentiles and that percentile thresholds alone may not reliably capture distinctions related to experience or responsibility.[12]

Taken together, these issues raise questions about whether further increases in percentile anchoring will consistently improve identification of market wages for comparable jobs— DOL's job in computing prevailing wages under the statute. To the extent the methodology does not adequately distinguish among levels of experience

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[11] 91 Fed. Reg. at 15458.

[12] Institute for Progress, supra note 5.

or responsibility, higher percentile benchmarks may increase compliance costs for employers whose wages already reflect market conditions, without any correlation to or justification in DOL's policy objectives.[13]

Finally, the NPRM continues to rely primarily on base salary as the measure of compensation. Yet for most U.S. Chamber member companies, base salary alone does not capture how compensation is structured in many sectors of the modern economy. Bonuses, equity, commissions, and other non-base forms of pay often constitute a significant portion of total compensation, and a methodology focused primarily on base salary therefore diverges from real-world compensation practices.

IV. Preserving Alternative Surveys and Exploring Alternative Solutions

From the inception of the H-1B prevailing wage requirement, DOL's prevailing wage framework has recognized that a single government survey cannot fully capture wages across all occupations, industries, and labor markets. Consistent with this principle, DOL's regulations— and before codified in regulation, the Department's GALs (General Administrative Letters)— have appropriately allowed employers to rely on independent alternative wage surveys where OEWS data do not reflect real-world conditions.[14] Maintaining access to these surveys is important to ensure that employers can rely on accurate and representative data, particularly in highly specialized, technical, or rapidly evolving roles where real-world market compensation may differ meaningfully from OEWS wage levels.

Preserving employers' ability to rely on alternative surveys supports accuracy and consistency in prevailing wage determinations. These surveys can help address distortions that may arise from broad occupational groupings and ensure that wage determinations are grounded in relevant market data. Employers are not seeking expanded discretion, but rather continued access to long-standing, legally recognized data sources that allow them to meet prevailing wage obligations when OEWS results are not fully representative of the position at issue.

At the same time, DOL should consider modernizing occupational classification tools so that they better reflect the structure of today's labor market and can be updated in shorter intervals than the 10-year update cycle employed by the Department's Bureau of Labor Statistics (BLS) for SOC (Standard Occupational Classification) codes. The granularity of the SOC codes is often insufficient in the

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[13] *Id.*

[14] 20 CFR § 656.40(g)

real-world immigration application. The old Dictionary of Occupational Titles (DOT), which was in use from 1938 to 1991, was employed for the permanent labor certification process for many years. Although DOT is no longer in use, it illustrates how DOL has the capacity to offer more specificity in occupational classification. Updating existing classification frameworks to incorporate more detailed and contemporary job distinctions would improve the accuracy of wage determinations.

V. Economic and Labor-Market Effects

DOL should revise and supplement its economic analysis to more fully account for the disparate and foreseeable impacts of the proposed prevailing wage increases. While DOL estimates an average increase of approximately $14,000 per sponsored worker annually, this aggregate figure obscures substantial variation by wage level and geography. For example, analysis of OEWS data shows that a Level I software developer wage could increase from approximately $115,000 to $142,000 in the San Jose-Santa Clara labor market—a jump of more than $25,000, or roughly 23 percent—while similar roles in lower-cost regions experience different but still significant shifts. These impacts are even more pronounced for entry-level positions, where increases often exceed 30 percent, far outpacing the overall average. A robust analysis should therefore examine these differential effects and assess how steep and abrupt increases are likely to reduce hiring, delay or foreclose immigrant visa sponsorship, and incentivize offshoring of research, development, and professional services. These are secondary but predictable consequences that the NPRM acknowledges in part but does not meaningfully evaluate.[15]

VI. Self-reinforcing Wage Escalation and Inflationary Impact

The NPRM's proposed percentile increases introduce a structural feedback loop within the OEWS-based prevailing wage methodology that the Department has neither modeled nor addressed. Rather than establishing a stable, market-reflective wage floor, the rule risks setting in motion a self-reinforcing cycle of wage escalation that compounds labor costs over time and distorts underlying market signals.

This dynamic arises because the proposed increases would require employers in many cases to pay sponsored workers more than U.S. workers performing comparable roles. Employers seeking to maintain internal pay equity would predictably raise wages for similarly situated U.S. workers.[16] Those increases would then be captured in

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[15] Institute for Progress, *supra* note 5.

[16] 91 Fed. Reg. at 15458, 15461–62.

OEWS survey data, which the Department uses to calculate prevailing wages. When elevated percentile thresholds are reapplied to this higher wage base, prevailing wage levels rise again, triggering further employer adjustments and perpetuating the cycle.

The result is a compounding, mechanically driven escalation in wage floors that becomes progressively detached from actual labor market conditions. Unlike market-driven wage growth, which reflects changes in supply, demand, and productivity, this feedback loop is driven by the interaction between regulatory thresholds and employer responses to them.

The consequences extend beyond employer costs. Sustained labor cost escalation in sectors that rely heavily on H-1B and PERM sponsorship, such as technology, healthcare, higher education, and research, will be passed through to prices of goods and services, with ripple effects across supply chains and institutional budgets.

The Department's economic analysis does not account for this compounding dynamic. The NPRM's estimated $14,000 average annual increase captures only the initial adjustment for sponsored workers and does not model wage harmonization effects, feedback into OEWS data, or cumulative increases over time. As a result, it understates the rule's full economic impact. This omission raises serious concerns about the adequacy of the agency's cost-benefit analysis and warrants withdrawal or substantial revision of the proposal to address these structural effects and consider less distortive alternatives.

This analytical gap is not merely an academic concern; it goes to the adequacy of the agency's cost-benefit analysis under the Administrative Procedure Act. A rule whose own methodology foreseeably produces compounding cost increases that the agency has failed to evaluate cannot be said to rest on reasoned decision-making.[17] The Department should withdraw or substantially revise the NPRM to address this structural deficiency and evaluate less distortive alternatives— including experience-based adjustments that do not depend on a methodology susceptible to self-reinforcing escalation.

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[17] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must examine "the relevant data and articulate a satisfactory explanation for its action"); *Encino Motorcars, LLC v. Navarro*, 579 U.S. at 222.

Conclusion

Protecting U.S. workers from wage undercutting is an important policy objective. However, the NPRM does not adequately demonstrate that the existing prevailing wage framework fails to meet this goal, nor does it show that mechanical percentile escalation is an effective or targeted solution. Abrupt, across-the-board wage escalation produces significant disruption without delivering commensurate benefits.

For these reasons, DOL should withdraw the NPRM or substantially revise it to consider experience-based or other targeted approaches that align with statutory requirements and labor market realities.

Respectfully submitted,

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