Before the
United States Department of Labor,
Employment and Training Administration
Washington, D.C.

In re	Docket No. ETA-2026-0001 / RIN 1205-AC30
Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States	

COMMENTS OF

THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)

The Computer & Communications Industry Association ("CCIA")[1] submits the following comments to the Department of Labor (DOL) notice of proposed rulemaking entitled "Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals in the United States" ("NPRM").[2]

I. Introduction

CCIA appreciates the opportunity to provide comments on the DOL's NPRM, which would, if finalized, significantly revise the methodology for calculating prevailing wages under the H-1B, H-1B1, E-3, and PERM programs. As a general matter, the NPRM represents one of the most significant changes to H-1B and PERM wage requirements in decades, with entry-level salary requirements potentially increasing by more than 30 percent.

The U.S. technology sector is a central driver of economic growth, productivity, and global competitiveness. Its continued success depends on access to highly skilled talent and on compensation structures that reflect modern labor markets. More specifically, CCIA's member

[1] CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA's members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks, and full, fair, and open competition in the computer, telecommunications, and Internet industries. A complete list of CCIA members is available at http://www.ccianet.org/members

[2] "The US Department of Labor Issues Proposed Rule Revising Prevailing Wage Methodology for H-1B, PERM Visa Programs" (Mar. 26, 2026), published at Fed. Reg. 2026-06017 (March 27, 2026).

companies collectively conduct business in a highly competitive global technology industry that requires access to the best talent in the world. Employment-based and nonimmigrant visa programs are essential components in retaining a skilled workforce that drives innovations in areas of emerging technology. When CCIA member companies hire foreign workers, it is because those workers have the specific skills and talents that these companies need to advance research, develop products, and remain competitive with foreign rivals.

As detailed further the NPRM, if finalized, would frustrate this process by mismeasuring the skills and compensation of foreign workers, pricing out key talent and depriving U.S. companies of the specialized skills they require. CCIA's comments concerns highlight: 1) misalignment between federal wage requirements and total-compensation structures that prevail in the technology sector; 2) functionally eliminating the entry-level (Level I) wage tier that Congress preserved by statute; 3) relying on a stale economic baseline that does not account for two intervening regulatory measures already reshaping the H-1B population; 4) constraining the statutory right of employers to rely on alternative wage surveys; 5) undermining the global competitiveness of U.S. businesses as a result of these arbitrary constraints; and 6) ignoring an established empirical record showing that restrictions on high-skilled immigration force U.S. multinationals to shift R&D and other high-skilled work abroad, including to the United States' closest strategic competitors.

For these reasons, CCIA respectfully requests that the DOL withdraw its proposals until more impacts can be studied in areas of competition and innovation, especially in the technology sector.

II. The NPRM

On March 26, 2026, the DOL's Employment and Training Administration issued the NPRM to revise the methodology for calculating prevailing wages applicable to employers sponsoring workers under the H-1B, H-1B1, E-3, and PERM programs.[3] Under existing practices, employers must obtain a certified Labor Condition Application ("LCA"), and employers pursuing employment-based permanent residence must obtain a Prevailing Wage

[3] *Id.*

Determination through the PERM labor certification process.[4] Prevailing wages are determined based on the occupation, job duties, required experience, and geographic location of the position.

The DOL primarily relies on the Bureau of Labor Statistics' Occupational Employment and Wage Statistics ("OEWS") survey, which provides wage data across approximately 830 occupations and 530 metropolitan statistical areas and nonmetropolitan areas.[5] The OEWS framework divides wages into four levels:[6]

- Level I: Entry-Level
- Level II: Qualified
- Level III: Experienced
- Level IV: Fully Competent

Among other things, the NPRM would retain this four-tier framework while significantly increasing the percentile thresholds used to set each wage level as set forth below:[7]

Wage Level	**Current Percentile**	**Proposed Percentile**
Level I (entry)	17th percentile	34th percentile
Level II (qualified)	34th percentile	52nd percentile
Level III (experienced)	50th percentile	70th percentile
Level IV (fully competent)	67th percentile	88th percentile

The DOL contends that existing thresholds are too low and do not accurately reflect the wages of similarly employed U.S. workers.[8] The NPRM would apply broadly to employers, including CCIA members, that sponsor foreign workers under the covered visa categories. H-1B employers would constitute the largest affected group, which heavily impacts CCIA member companies.

[4] *Id.* at 15455-15456.
[5] Office of Foreign Labor Certification, FY 2024 LCA data: available at *https://www.dol.gov/agencies/eta/foreign-labor/performance*; *See also* https://www.bls.gov/oes/
[6] *See* INA § 212(p)(4), 8 U.S.C. 1182(p)(4) (requiring four wage levels commensurate with experience, education, and supervision); 20 CFR 655.731(a)(2)(ii) and 656.40(b)(2) (prevailing wage methodology).
[7] Fed. Reg. 2026-06017 at 15461
[8] *Id.* at 15454.

The NPRM's economic case rests substantially on a comparison drawn from FY 2020–2025 LCA data, in which DOL identifies an average gap between offered wages on H-1B applications and the OEWS mean wage for the same occupations and locations.[9] As discussed in Part V below, that comparison is not a reliable foundation for the proposed thresholds. It compares H-1B wages, which are concentrated at lower experience levels, against the overall OEWS occupational mean rather than the appropriate experience-adjusted comparator. It does not account for equity and incentive compensation excluded from OEWS by definition. And it predates two regulatory reforms: a $100,000 supplemental fee on most new cap-subject H-1B petitions,[10] and a wage-weighted cap selection process.[11] These two regulatory reforms have already begun to shift the H-1B population toward higher wage levels independently of any change to the OEWS percentile structure.

III. The NPRM Reflects an Incomplete Accounting of Modern Compensation Structures

The proposed methodology in the NPRM measures wages but does not measure skill. By evaluating wage compliance almost exclusively against guaranteed base salary derived from OEWS data, the NPRM systematically excludes from view the high-skill, high-value workers whose total compensation is structured around equity and performance incentives rather than guaranteed base salary. The OEWS survey, by definition, measures only "straight-time, gross pay" and excludes critical forms of compensation such as bonuses, incentive pay, and equity-based compensation. This approach is fundamentally incompatible with compensation practices in the technology sector.

Equity-based compensation, particularly Restricted Stock Units ("RSUs"), is a standard and essential component of total compensation for highly skilled workers. These instruments are not peripheral; they are a core mechanism through which companies align employee incentives with long-term innovation and firm performance. By excluding equity and incentive compensation, the NPRM: 1) systematically understates actual earnings of H-1B workers; 2)

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[9] *Id.* at 15461 (DOL economic analysis comparing average prevailing wage to average offered wage for FY 2020-2025 LCAs).

[10] Proclamation No. 10973, Restriction on Entry of Certain Nonimmigrant Workers, 90 Fed. Reg. 46027 (Sept. 24, 2025).

[11] Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions, 90 Fed. Reg. 60864 (Dec. 29, 2025) (final rule effective Feb. 27, 2026).

creates the false appearance of non-compliance with prevailing wage requirements; and 3) penalizes employers that utilize widely accepted, market-based compensation models.

The likely outcome is not improved wage integrity, but distortion of compensation structures. Employers may be forced to reduce or eliminate equity-based compensation in favor of inflated base salaries that satisfy regulatory metrics but weaken long-term alignment and innovation incentives. Moreover, the rule's narrow focus on base salary ignores today's economic market structures. Total compensation, not base wages alone, determines labor market competitiveness. A regulatory framework that disregards these incentives risks substituting administratively inaccurate metrics for a complete market representation.

The DOL may contend that equity-based compensation such as RSUs cannot be reliably valued because of potential market fluctuations. However, this concern is overstated. Employers routinely structure compensation around frameworks that assign reasonable, good-faith value to equity at the time of grant for purposes including, but not limited to, executive compensation disclosure, financial accounting, and tax reporting. In addition, the DOL already permits compliance mechanisms like "catch-up" payments that address variability in compensation. To that end, excluding equity from prevailing wage considerations would be inconsistent with similar variability structures that the DOL accepts elsewhere in its regulatory framework, and that are accepted widely in other federal regulatory frameworks.

Moreover, the NPRM would introduce practical, real-world consequences where U.S. employers do not have access to necessary skills. Furthermore, it would impede domestic productivity and halt innovation of products that remain essential to the American public. The empirical record shows that when access to high-skilled talent is constrained domestically, U.S. multinationals respond by hiring abroad rather than substituting toward domestic workers.[12] That dynamic is particularly damaging in nascent emerging technologies, including artificial intelligence, where the U.S. is in close competition with global rivals. All of these consequences carry a significant cost to the American economy.

[12] Britta Glennon, How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program, 70 Mgmt. Sci. 907 (2024) https://pubsonline.informs.org/doi/10.1287/mnsc.2023.4715; Britta Glennon, How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program, NBER Working Paper No. 27538 (2020), https://www.nber.org/papers/w27538.

IV. The NPRM Would Functionally Eliminate the Entry-Level (Level I) Wage Tier

According to the DOL, previous prevailing wage levels were set below actual market rates.[13] As a result, DOL concludes that deflated market rates incentivized employers to use visa programs to displace domestic workers with cheaper foreign labor.[14] To correct this, the NPRM raises the Level I (entry-level) prevailing wage tier from the 17th percentile to the 34th percentile of the wage distribution to ensure parity with similarly employed U.S. workers.

If finalized, the NPRM would functionally eliminate the entry-level wage category. By definition, entry-level roles correspond to positions requiring limited experience and supervision.[15] Elevating Level I wages to the 34th percentile reclassifies these roles into mid-tier compensation bands, severing the connection between wage levels and actual job requirements. Penn Wharton estimated that under the NPRM, 21 percent of current registrations would fall below the new Level I floor.[16] In practical terms, the DOL estimates modeled wage increases of approximately 20 to 33 percent. However, these figures are derived from percentile adjustments to OEWS base wage data and do not reflect actual compensation practices or current labor market conditions. Because OEWS excludes equity and other forms of incentive compensation, aggregates differentiated roles into broad occupational categories, and relies on assumptions about workforce composition that have shifted in recent years, the resulting estimates overstate the extent to which current wages fall below the proposed thresholds.

There is also a structural problem. INA § 212(p)(4) requires "at least four levels of wages commensurate with experience, education, and the level of supervision." The current 17/34/50/67 percentile structure already produces four such levels. Setting Level I at the 34th percentile, at what is currently the Level II threshold, compresses the lower half of the schedule and effectively converts a four-tier framework into a three-tier framework. That outcome is in

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[13] *Id.* at 15492.

[14] *See id.* at 15461.

[15] 8 U.S.C. 1182(p)(4).

[16] Alex Arnon, The Impact of Higher Prevailing Wages on the H-1B Visa Lottery, Penn Wharton Budget Model, Univ of Pennsylvania (April 23, 2026), https://budgetmodel.wharton.upenn.edu/p/2026-04-08-the-impact-of-higher-prevailing-wages-on-the-h-1b-visa-lottery-update-1/.

tension with the statutory design Congress chose, in which Level I was meant to capture the "entry" level rather than a mid-distribution wage.

Indeed, employers structure entry-level hiring around fixed compensation bands calibrated to expected early-career productivity. A sudden, regulation-driven increase in required base salary disrupts that calibration, creating a mismatch between mandated wages and the economic value of entry-level positions. Faced with this mismatch, employers are likely to reduce entry-level hiring, substitute toward more experienced workers, or shift roles to alternative labor markets, including offshore locations. As a result, the proposed increases would effectively price employers out of hiring recent graduates and early-career professionals.

The NPRM also incorrectly assumes that an employee's value to the U.S. economy is entirely dictated by the amount of salary an employer pays them. In reality, the OEWS wage level is determined principally by factors such as the minimum education, training, and experience required for the position. A Level I or Level II professional, such as a recent foreign student graduating at the top of their class from a prestigious U.S. university, may possess the exact cutting-edge skills necessary to advance a company's critical research and development. It is therefore inconsistent to assume that wage levels should track perceived worker "value" rather than objective job criteria such as required education, experience, and responsibility.

The consequences of these proposed amendments are particularly acute for the U.S. STEM pipeline. Foreign nationals earn the majority of advanced STEM degrees conferred by U.S. universities: in 2019, temporary visa holders earned 59 percent of U.S. doctorates in computer sciences and 58 percent in engineering.[17] Intention-to-stay rates among international STEM Ph.D. graduates are 70 percent or higher in nearly every STEM field and reach 85 to 90 percent in computer science, biology, and engineering.[18] Realized long-term stay rates have also been high, aligning with the intention-to-stay data: As of February 2017, roughly 77% of the more than 178,000 international STEM PHD graduates from U.S. universities between 2000 and

[17] Nat'l Ctr. for Sci. & Eng'g Statistics, Higher Education in Science and Engineering, Nat'l Sci. Bd., Sci. & Eng'g Indicators 2022 (2022), https://ncses.nsf.gov/pubs/nsb20223/international-s-e-higher-education.

[18] Remco Zwetsloot et al., Trends in U.S. Intention-to-Stay Rates of International Ph.D. Graduates Across Nationality and STEM Fields, Ctr. for Sec. & Emerging Tech. (Apr. 2020), https://pdfs.semanticscholar.org/c363/ca93f06777444f706d90f6e778cf83c1edd8.pdf.

2015 were still living in the country.[19] The H-1B program is the principal mechanism that converts that educational investment into U.S. economic value. If employers cannot hire these graduates at appropriate entry-level wages, those individuals will be forced to leave the United States. The predictable and counterproductive outcome is that the U.S. will educate top-tier talent only to export it to global competitors, including in critical races such as artificial intelligence.

Empirical research has consistently shown that restrictions on high-skilled immigration cause U.S. firms to expand operations abroad. In the leading study on the question, Professor Britta Glennon found, using matched firm-level data on H-1B visas and U.S. multinational activity, that for the average multinational corporation each visa rejection was associated with approximately 0.4 additional foreign affiliate hires, with the most globalized firms hiring approximately 0.9 employees abroad per visa rejection.[20] That foreign hiring was concentrated in Canada, India, and China and in R&D-intensive activities. Other empirical work has likewise found that high-skilled foreign workers complement, rather than substitute for, the domestic workforce: increases in H-1B admissions raise total invention without displacing native science and engineering workers; H-1B lottery wins increase firm employment, revenue, survival, and venture capital funding; and immigrants are responsible for roughly 32 percent of aggregate U.S. innovation, inclusive of indirect productivity spillovers on U.S.-born collaborators.[21] When access to talent is constrained domestically, employers shift investment and job creation to

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[19] Jack Corrigan, James Dunham & Remco Zwetsloot, The Long-Term Stay Rates of International STEM PhD Graduates (Ctr. for Sec. & Emerging Tech., Apr. 2022). https://www.cset.georgetown.edu/publication/the-long-term-stay-rates-of-international-stem-phd-graduates/

[20] Glennon, How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program.

[21] *See* William R. Kerr & William F. Lincoln, The Supply Side of Innovation: H-1B Visa Reforms and U.S. Ethnic Invention, 28 J. Lab. Econ. 473 (2010) https://www.jstor.org/stable/10.1086/651934 (finding that increases in H-1B admissions raised total invention through direct contributions of immigrant inventors, with no displacement of native science and engineering workers and possible small crowding-in effects); Stephen G. Dimmock, Jiekun Huang & Scott J. Weisbenner, Give Me Your Tired, Your Poor, Your High-Skilled Labor: H-1B Lottery Outcomes and Entrepreneurial Success, 68 Mgmt. Sci. 6950 (2022). https://pubsonline.informs.org/doi/10.1287/mnsc.2021.4152 ("Relative to other firms that also applied for H-1B visas, firms with higher lottery win rates are more likely to receive additional venture capital funding and to have a successful exit via an IPO or acquisition. H-1B visa lottery winners also subsequently receive more patents and patent citations. Overall, our results suggest that access to high-skill labor is a critical determinant of success for start-up firms."); Shai Bernstein, Rebecca Diamond, Abhisit Jiranaphawiboon, Timothy McQuade & Beatriz Pousada, The Contribution of High-Skilled Immigrants to Innovation in the United States, NBER Working Paper No. 30797 (2022) https://www.nber.org/papers/w30797 (estimating that immigrants are responsible for approximately 32 percent of aggregate U.S. innovation, including indirect productivity spillovers on U.S.-born collaborators).

jurisdictions where that talent is available. The NPRM risks accelerating this dynamic, with the result that U.S. universities will train our nation's direct competition.

The consequences of these proposed amendments in the NPRM are particularly acute for the U.S. STEM pipeline. Many highly skilled foreign nationals are educated and trained at U.S. universities. If employers cannot hire these graduates at appropriate entry-level wages, those individuals will be forced to leave the U.S. A predictable and counterproductive outcome would ultimately occur: the U.S. will educate top-tier talent only to export it to global competitors and potentially lose out in critical races such as in the artificial intelligence space.

Empirical research has consistently shown that restrictions on high-skilled immigration lead firms to expand operations abroad.[22] When access to talent is constrained domestically, employers shift investment and job creation to jurisdictions where that talent is available. The NPRM risks accelerating this dynamic and consequently resulting in U.S. universities training our nation's direct competition.

V. The NPRM Relies on a Stale Baseline That Predates Two Intervening Regulatory Reforms

The DOL's economic analysis is calibrated against a workforce population that no longer exists. The agency's core empirical claim, which is derived from FY 2020–2025 LCA data, compares average H-1B offered wages to OEWS occupational means and concludes that H-1B workers are underpaid relative to similarly employed U.S. workers. That comparison is flawed in three respects, each of which independently undermines the magnitude of the proposed thresholds.

First, the comparator is inappropriate. OEWS occupational means include workers across all experience levels, including senior workers who would not be the right comparator for entry-level or qualified-level H-1B positions. Comparing H-1B offered wages, which are disproportionately concentrated in Levels I and II by design of the four-tier structure, to the

[22] *See*, *e.g.*, Glennon, How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program.

overall occupational mean systematically generates a "gap" without showing that any underpayment exists relative to similarly experienced U.S. workers.

Second, the comparison ignores total compensation. For the reasons discussed in Part III, OEWS measures only straight-time, gross pay and excludes equity and incentive compensation. The wage gap DOL identifies is therefore an artifact of the data rather than a measure of actual compensation differentials, particularly in the technology sector where equity is a substantial component of total pay for skilled workers.

Third, and most fundamentally, the underlying data is stale. The H-1B workforce reflected in FY 2020–2025 LCAs predates two regulatory reforms that are already reshaping the H-1B population independently of any change to OEWS percentiles. On September 19, 2025, Presidential Proclamation 10973 imposed a $100,000 supplemental fee on most new cap-subject H-1B petitions for beneficiaries outside the United States.[23] On December 29, 2025, DHS finalized a rule replacing the random H-1B cap lottery with a wage-weighted selection process that allocates lottery entries based on offered wage level: one entry for Level I, two for Level II, three for Level III, and four for Level IV.[24] That rule took effect on February 27, 2026, and applies to the FY 2027 cap registration cycle conducted in March 2026.[25]

The combined effect is to shift the H-1B population sharply toward higher wage levels, raise per-petition costs for foreign hires, and reduce selection probabilities for lower-paid positions; all before this NPRM is finalized. Critically, the first cohort of H-1B workers selected under the wage-weighted lottery does not begin employment until October 1, 2026, which is after the NPRM's comment period closes. There is therefore no post-reform LCA data available to support the agency's analysis. Any model calibrated on pre-reform data will systematically misrepresent the present-day labor market: the baseline wage distribution used by the DOL is skewed downward relative to the H-1B population that will actually exist when this rule takes

[23] Proclamation No. 10,973, *Restriction on Entry of Certain Nonimmigrant Workers*, Daily Comp. Pres. Doc. (Sept. 19, 2025), https://www.govinfo.gov/content/pkg/DCPD-202500931/pdf/DCPD-202500931.pdf
[24] Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions, 90 Fed. Reg. 60,864 (Dec. 29, 2025) (to be codified at 8 C.F.R. pt. 214).
[25] *Id.*

effect, making the estimated incidence of "underpayment" overstated and the proposed thresholds correspondingly inflated.

Put another way, the NPRM attempts to correct a problem the administration has already addressed through structural changes to the visa allocation system. At a minimum, the DOL should withdraw the NPRM and reevaluate its economic analysis using post-reform H-1B selection data once that data becomes available. Absent such recalibration, the NPRM's economic justification does not account for present-day conditions and cannot support the magnitude of the proposed changes. CCIA further notes that the DOL last attempted a comparable rulemaking in 2020, with similar percentile thresholds (Level I at 35 percent and Level IV at 90 percent), and that the 2021 final rule was vacated in Chamber of Commerce v. U.S. Department of Homeland Security.[26] Proceeding now on a stale and incomplete record would invite renewed procedural challenge.

VI. Disproportionate Impact on Small Employers and Critical AI Talent

The proposed OEWS wage increases would impose substantial costs across the economy, but the burden would fall disproportionately on small and emerging companies. In fact, preliminary modeling across CCIA member companies demonstrates that the proposed wage thresholds would disqualify the majority of the existing, fully compliant H-1B workforce. This effectively severs the pipeline for the highly specialized, critical AI talent required to maintain U.S. technological leadership.

The H-1B program is not, contrary to common impression, a large-employer-only mechanism. According to USCIS data analyzed by the National Foundation for American Policy, in FY 2024, 70 percent of new H-1B petitions went to employers that filed 100 or fewer applications for initial employment.[27] Small businesses are responsible for a substantial portion

[26] Chamber of Commerce v. U.S. Dep't of Homeland Sec., No. 20-cv-7331, 2021 WL 2592430 (N.D. Cal. June 23, 2021) (vacating Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States, 86 Fed. Reg. 3608 (Jan. 14, 2021)). https://www.uschamber.com/assets/documents/Order20Vacating20DOL20Rule20-20U.S.20Chamber20v.20DHS2028N.D.20Cal.29.pdf

[27] Stuart Anderson, H-1B Petitions and Denial Rates for FY 2024, Nat'l Found. for Am. Pol'y 1 (Dec. 2024), https://nfap.com/wp-content/uploads/2024/12/H-1B-Petitions-and-Denial-Rates-For-FY-2024.NFAP-Policy-Brief.December-2024.pdf.

of net job creation in the United States, and disproportionately rely on H-1B sponsorship to fill specialized roles for which domestic talent pipelines are constrained.

The interaction between the NPRM and the wage-weighted lottery is particularly damaging to small employers. A startup that cannot pay Level III or Level IV wages now has effectively reduced odds in the H-1B cap lottery (one entry per Level I petition versus four entries per Level IV petition). Combined with the proposed re-pegging of Level I to the 34th percentile and the Proclamation 10973 $100,000 fee for new petitions for beneficiaries abroad, the cumulative effect is to foreclose the H-1B program for small employers and entry-level positions, which are the very populations where high-skilled foreign talent provides the greatest complementarity to existing U.S. workforces.

These effects are especially concerning in strategically critical fields such as artificial intelligence. The OEWS occupational categories most relevant to AI work, notably including but not limited to Standard Occupational Classification ("SOC") code 15-1221 (Computer and Information Research Scientists) and 15-1252 (Software Developers), aggregate AI research scientists, machine learning engineers, applied research engineers, and other specialized roles into broad categories with substantial within-occupation wage variation. The May 2024 OEWS reports a national median annual wage of approximately $140,910 for Computer and Information Research Scientists, with a 90th percentile of approximately $232,120.[28] Reported total compensation at frontier U.S. AI laboratories for these same roles routinely exceeds these figures by multiples, reflecting role-specific market premia that the broad SOC code does not capture and that, in significant part, take the form of equity rather than guaranteed base salary.

For startups that have limited capital runway, the effect of the NPRM is likely to be near-total exclusion from recruiting critical foreign talent. Start-ups can offer limited guaranteed cash compensation but can offset this limitation by offering generous equity stakes that are by their nature speculative but potentially worth large sums. Many talented foreign workers would happily work for U.S. startups for total compensation that was heavy on equity and light on cash; the NPRM would prevent these mutually beneficial transactions from occurring, pushing these

[28] U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics: Computer and Information Research Scientists (15-1221) (May 2024) https://www.bls.gov/ooh/computer-and-information-technology/computer-and-information-research-scientists.htm.

talented workers away from the U.S. startup scene that has been a driver of U.S. innovation leadership.

The broader implications for U.S. AI competitiveness are direct and extend well beyond just startups. A meaningful share of currently compliant, high-skilled foreign workers in AI roles, despite earning total compensation well above U.S. medians, would face proposed prevailing wage thresholds calibrated to broad OEWS categories that misrepresent their actual market compensation. Excluding these workers from the U.S. labor market does not protect domestic workers; it shifts highly specialized talent to competing jurisdictions, directly undermining U.S. leadership in AI and other emerging technologies. Read against the empirical record discussed in Part IV, the predictable result is that U.S. firms will hire these workers at their foreign affiliates in Canada, India, China, or Europe rather than redistribute the same hiring to U.S. domestic workers.

VII. Unwarranted Constraints on Alternative Wage Surveys

While the DOL proposes to artificially inflate the OEWS wage tiers, the NPRM also signals an intent toward the use of independent, employer-provided alternative wage surveys to "prevent abuse".[29] Such a result would limit an employer's statutorily permitted right under the Immigration and Nationality Act to utilize an "independent authoritative source" or "another legitimate source of wage data".[30]

This approach is unfortunately misplaced. Indeed, the DOL has previously acknowledged that OEWS data provides wage information at a broad occupational level and does not capture variation in wages based on skill, experience, education, or responsibility within an occupation.[31] This limitation is particularly acute in the technology sector, where job roles are highly specialized and evolve rapidly. For example, OEWS categories such as “Software Developers” or “Computer and Information Research Scientists” encompass a wide range of distinct roles, including machine learning engineers, distributed systems engineers, cybersecurity specialists,

[29] Fed. Reg. 2026-06017 at 15479

[30] *See* 20 C.F.R. § 655.731(a)(2)(iii) (permitting employers to use “a survey conducted by an independent authoritative source” or “another legitimate source of wage information” to establish the prevailing wage)

[31] *See, e.g.,* Labor Certification for the Permanent Employment of Aliens in the United States, 69 Fed. Reg. 77,326, 77,348 (Dec. 27, 2004)

and AI researchers, with materially different skill requirements, experience levels, and market compensation. For these specialized roles, alternative wage surveys are often the only data source granular enough to capture the relevant labor market.

The DOL's telegraphed intent to scrutinize alternative surveys "to prevent abuse" carries significant practical consequences even absent a formal restriction on their use. Combined with the dramatic inflation of OEWS thresholds, the rule creates an asymmetric compliance regime: employers using OEWS-based determinations enjoy a longstanding "safe harbor" against challenge, while employers using alternative surveys face heightened agency scrutiny, additional documentation burdens, and increased risk of post-hoc rejection. That asymmetry will, by design, channel employers toward OEWS, and therefore toward the inflated thresholds the NPRM proposes, regardless of whether OEWS or an alternative survey produces a more accurate measure of the relevant local market wage. The signal to the regulated community is unmistakable: alternative surveys remain technically available, but their practical use will be increasingly difficult relative to today.

Private wage surveys are not a loophole. They are a necessary tool for accurately capturing market wages in complex and dynamic labor markets, and Congress preserved their use in the statute. A balanced approach should recognize the complementary role of OEWS and high-quality private surveys, rather than privileging one at the expense of accuracy and statutory employer rights. CCIA urges the DOL to make clear in any final rule that the use of independent authoritative sources and other legitimate wage data sources will continue to be evaluated on the same neutral methodological criteria that have governed the regulations to date, without an implicit presumption against their use.

VIII. Conclusion

Ideas and research are the raw materials with which the technology industry is built, and access to top global talent is essential to U.S. competitiveness in artificial intelligence and other emerging technologies. The NPRM, in its current form, would undermine rather than advance that goal. It misaligns federal wage requirements with the total-compensation structures that define modern technology employment; functionally eliminates the statutorily mandated entry-level wage tier; rests on a stale economic baseline that predates two intervening regulatory

reforms already reshaping the H-1B population; and signals an intent to narrow employers' statutory right to rely on alternative wage surveys precisely where OEWS is most deficient.

CCIA strongly urges the DOL to withdraw or substantially revise the proposed prevailing wage methodology to reflect true market compensation structures, preserve our access to global STEM graduates, and protect employers' rights to use accurate, independent alternative wage data.

Respectfully submitted,

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