

May 26, 2026

Brian Pasternak, Administrator,  
Office of Foreign Labor Certification  
Henry Mack, Ed.D., Assistant Secretary for Employment and Training  
Employment and Training Administration  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Submitted via [www.regulations.gov](http://www.regulations.gov)

**Re: Comment on Notice of Proposed Rulemaking (NPRM), *Improving Wage Protections for the Temporary and Permanent Employment of Certain Foreign Nationals* (Docket No. ETA-2026-0001; RIN 1205-AC30; 91 Fed. Reg. 15454 (Mar. 27, 2026))**

Dear Mr. Pasternak and Dr. Mack:

We submit this comment to the proposed rule offered by the U.S. Department of Labor (DOL or the Department) revising the methodology for calculating prevailing wages in the H-1B, H-1B1, E-3, and PERM programs.

We are attorneys who practice exclusively in employment-based immigration law, each with more than a decade of experience representing employers and individuals in the precise classifications this rule would govern. We have filed and received certifications of many hundreds of labor condition applications and immigrant petitions that depend on the prevailing-wage framework the proposed rule would change.

We submit this comment together, each solely in our personal capacity, with the collective objective of offering alternative methods that we believe would better promote the statutory objectives underpinning the requirement that prevailing wages be ascertained accurately, namely, the avoidance of harm to the wages, working conditions and job opportunities of U.S. workers.

Although we welcome DOL's avowed interest in improving the Department's process for ascertaining prevailing wages, our objections to the NPRM are foundational. The proposed rule rests on a methodology the Department's own analysis cannot support. The rule would shift the prevailing-wage percentiles upward on the premise that a higher percentile reflects a higher level of skill, education, and experience. Yet the data the Department uses to set those percentiles, the Occupational Employment and Wage Statistics (OEWS) survey, does not measure skill, education, or experience.

The Department concedes this. In the same rulemaking, the Department considered an alternative designed to introduce an experience metric, *Experience Benchmarking*, on which it has sought public comment. That the Department must propose a separate, experience-augmented method at all is an acknowledgement that the percentile methodology it would adopt cannot, on the OEWS data alone, distinguish among workers on the very dimension the rule claims to capture.

The defects we cite in the NPRM are independent and individually sufficient. We respectfully ask the Department to address each of the following objections individually in any final rule, as the Administrative Procedure Act requires, and while doing so, to withdraw the NPRM for further study and appropriate action. We summarize these defects here and develop each below:

- (1) OEWS data cannot support skill-, education-, or experience-based wage leveling, and the Department concedes the data omit these variables (Part I).
- (2) Shifting the percentile thresholds does not cure the defect; it enlarges the wage obligation anchored to a structure that contains no skill or experience signal (Part I).
- (3) No existing alternative or retrospective governmental data source cures the defect; administrative wage data are more lagged than OEWS, are barred or constrained by federal confidentiality and privacy statutes, and still capture no task-level skill structure (Part II).
- (4) The economic analysis is inadequate under the Regulatory Flexibility Act and fails to model distributional, small-entity, and offshoring effects the Department's own figures make foreseeable (Part III).
- (5) Occupational granularity is becoming more necessary, not less, as occupations change faster, while OEWS is structurally lagged and subject to documented data-quality failures (Part IV).
- (6) The rule risks recreating the cross-occupation wage cascade Congress deliberately repealed in 1991, and under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024), is not a reading of the statute that federal courts will find persuasive (Part V).
- (7) The rule suffers from independent defects under the Administrative Procedure Act (APA), including unexplained line-drawing, failure to consider reliance interests, and failure to treat alternative wage sources on equal footing (Part VI).

For the reasons set out below, we ask the Department to withdraw the proposed rule. In the alternative, we ask the Department to delay implementation substantially pending the development of an adequate data foundation, and at a minimum to respond individually to each objection in any final rule.

## **I. OEWS Data Cannot Support Skill-, Education-, or Experience-Based Wage Leveling, and the Department Concedes It**

The DOL's prevailing-wage methodology assigns each position to one of four wage levels intended to approximate differences among entry-level, qualified, experienced, and fully competent workers. The proposed rule would raise the percentile floor for each level: Wage Level I would move from the 17th percentile to the 34th percentile, Wage Level II from the 34th to the 52nd, Wage Level III from the 50th to the 70th, and Wage Level IV from the 67th to the 88th percentile. 91 Fed. Reg. at 15460. The rule's stated rationale is that a higher proffered wage, corresponding to a higher percentile, is a reasonable proxy for a higher level of skill.

That rationale fails at the data layer. The OEWS survey is an employer-reported, establishment-level survey covering roughly 830 detailed occupational codes, with wages aggregated by occupation and geographic area. It records what employers report paying. It does not record, and was never designed to record, the education, years of experience, supervisory authority, or job complexity of the workers receiving those wages.

This is not our characterization. It is the Bureau of Labor Statistics' own. The OEWS program states that "*the OEWS data do not contain information about pay according to the level of work performed,*" and that "*Workers may have different levels of responsibility, despite being in the same occupation.*" BLS, Occupational Employment and Wage Statistics: Frequently Asked Questions, [https://www.bls.gov/oes/oes\\_ques.htm](https://www.bls.gov/oes/oes_ques.htm). The Bureau identifies a separate program, the National Compensation Survey, as the program designed to produce wage data by level of work. The data the Department uses to set wage levels is, by the producing agency's own description, the wrong instrument for measuring levels of work.

The Department concedes the point twice in this rulemaking. First, it acknowledges that "*the underlying OEWS data do not collect information on worker education or experience.*" 91 Fed. Reg. at 15489-15490. Second, it acknowledges that the existing four-tier structure as implemented "*does not sufficiently differentiate among workers based on experience, education, and responsibility.*" 91 Fed. Reg. at 15492. These admissions are dispositive of the rule's premise. A methodology built on data that omit education and experience cannot measure education and experience, regardless of which percentile the Department selects.

#### **A. The Department's Own Proposed Alternative Concedes That OEWS Cannot Supply an Experience Metric**

The Department itself recognizes the experience problem. Rather than rely on OEWS alone, it has proposed and solicited comment on an alternative it calls Experience Benchmarking, which "*seeks to adjust prevailing wage levels by merging*" the OEWS data with "*education- and experience-adjusted wage estimates derived from the American Community Survey (ACS).*" 91 Fed. Reg. at 15489. Because even the ACS does not directly observe a worker's actual labor-market experience, the method would impute "*potential experience*" as a worker's age minus years of schooling minus the age at which schooling begins. 91 Fed. Reg. at 15490 n.243.

The Department has not represented that this alternative solves the problem; rather, DOL has placed it before the public for comment. 91 Fed. Reg. at 15489-15490. We respond to that solicitation directly. That the Department must reach outside OEWS, to a separate survey and an imputation formula, to approximate experience is itself a concession that OEWS alone cannot support experience-based wage leveling. And the imputation the alternative would require, estimating experience as age minus years of schooling, demonstrates that even the augmented approach does not observe actual experience; it guesses at it from demographic proxies. The Department should not, in the same rulemaking, adopt a percentile shift that presupposes the very experience-and-skill measure its own proposed alternative concedes the base data cannot provide.

If Experience Benchmarking is necessary to introduce an experience signal, then the percentile methodology, which introduces none, cannot rest on the experience rationale the rule assigns to it. We urge the Department to consider this deficiency as justification for withdrawing the NPRM, or less preferably, address this inconsistency expressly in any final rule.

### **B. Raising the Percentile Enlarges the Error It Does Not Cure**

Because the OEWS distribution contains no skill or experience signal, moving the percentile floor upward does not add information. It raises the wage obligation attached to a structure that remains, in the Department's words, unable to differentiate workers by experience, education, and responsibility. The dollar consequences are substantial and are set out in the Department's own analysis. Under Exhibit 5, the Level I prevailing wage rises from \$73,279 to \$97,746, an increase of 33.39 percent; Level II rises 24.47 percent; Level III rises 20.79 percent; and Level IV rises 21.68 percent. 91 Fed. Reg. at 15485. The Department estimates an average annual wage transfer of approximately \$14,000 per worker. 91 Fed. Reg. at 15485.

These are not increases keyed to any measured difference in worker skill. They are uniform upward shifts of percentile boundaries applied to a wage distribution that the Department concedes does not encode the attribute the levels purport to represent. A larger number multiplied by an invalid premise is a larger error, not a more accurate wage.

The mismatch is visible in the published data for the occupation the rule most affects. The Bureau publishes, for Software Developers (SOC 15-1252), national wages only as raw percentile points of the wage distribution. For the May 2025 reference period, the published annual figures are a 10th percentile of \$82,460, a 25th percentile of \$105,210, a median of \$135,980, a 75th percentile of \$171,980, and a 90th percentile of \$214,670. U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, Software Developers (15-1252), May 2025, <https://data.bls.gov/oes/>. There is no Level I, II, III, or IV anywhere in the Bureau's occupational data. The four-level structure exists only as an overlay the Office of Foreign Labor Certification imposes on the Bureau's percentiles. The rule treats that overlay as if it measured skill. It does not; it measures position in a pay distribution that varies for reasons, including industry, employer size, geography, and bargaining, that have nothing to do with the individual worker's qualifications.

We address the inter-agency wage proposal referenced in the preamble only in passing: it shares the same foundational defect, because it too rests on wage data that do not observe education or experience, and it therefore cannot cure what the percentile methodology cannot cure.

## **II. No Alternative or Retrospective Data Source Cures the Defect**

Anticipating the obvious response, that the Department could improve accuracy by supplementing OEWS with administrative earnings data such as individual income tax returns, Forms W-2, or the Census Bureau's Longitudinal Employer-Household Dynamics data, we explain why no such source cures the defect and why each introduces new and independent problems.

First, these sources are retrospective and lagged. Tax and administrative earnings records describe prior-year compensation. They reflect labor-market conditions that have already passed by the time they could be incorporated into a prevailing-wage determination. They would compound, not cure, the delayed-timing problem that already afflicts OEWS, which we address in Part IV.

Second, these sources are protected by federal confidentiality statutes that bar or sharply constrain the linkage that experience modeling would require. Tax return information is confidential under 26 U.S.C. § 6103, which provides as a general rule that *returns and return information shall be confidential* and may be disclosed only as that section specifically authorizes. Records about identifiable individuals held by federal agencies are governed by the Privacy Act of 1974, 5 U.S.C. § 552a. Census-derived employment data, including the Longitudinal Employer-Household Dynamics program, are subject to the confidentiality protections of Title 13 of the United States Code. These are statutory commands, not administrative preferences. A methodology that would require matching individual earnings records to model experience runs directly into them.

Third, even setting aside delayed timing, privacy, and confidentiality, administrative wage data still would not capture the task-level structure that a valid skill measure requires. Wage records show what a person was paid. They do not encode what the job demands entail. The Department once maintained an instrument that did encode exactly that, the Dictionary of Occupational Titles, which we describe in Part IV. Wage data, however current and however linked, are a measure of price, not of the work. Substituting one pricing metric for another does not produce a skill measure.

Finally, the statutory history confirms that Congress already chose a narrow, employer-specific comparator rather than a broad wage-data comparator for the actual-wage prong. When the Department implemented the 1991 MTINA amendments (discussed further in Part V below), it adopted the comparator Congress prescribed: the wage paid “*to all other individuals with similar experience and qualifications for the specific employment in question.*” Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H-1B Visas, 59 Fed. Reg. 65646 (Dec. 20, 1994), <https://www.govinfo.gov/content/pkg/FR-1994-12-20/html/94-31114.htm>. That comparator looks to identifiable, similarly qualified workers at the same employer, not to a population wage distribution. A methodology that re-broadens the wage obligation toward an occupation-and-area distribution moves against the comparator Congress and the Department settled on.

### **III. The NPRM’s Economic Analysis Is Inadequate and Fails to Model or Consider Foreseeable Effects**

The proposed rule performs significant labor-market intervention without the data foundation required to accurately assess its consequences. The same data gap that prevents the rule from measuring skill prevents the Department from modeling the rule’s distributional effects. The Regulatory Flexibility Analysis illustrates the problem.

The Department concedes the scale of the small-entity impact. It identifies “13,602 unique small H-1B employers” that meet the Small Business Administration’s size standards, 91 Fed. Reg. at 15493, with the largest concentration, 7,990 employers, in Custom Computer Programming Services (NAICS 541511). It estimates an average annual wage cost of roughly \$20,298 per affected small entity. And it expressly finds that “this rule would have a significant economic impact on a substantial number of small entities affected.” 91 Fed. Reg. at 15494.

Having conceded a significant impact on a substantial number of small entities, the Department was required under 5 U.S.C. § 603(c) to analyze that impact and to describe significant regulatory alternatives that would minimize it. The analysis does not do so adequately. It does not examine how the burden is distributed across industry sectors, geographic regions, or business models that depend on entry- and mid-level professional workers. It does not model the cumulative cost or the opportunity cost to firms priced out of sponsoring early-career talent. And it does not present and assess feasible alternatives that would maintain program integrity without the disproportionate effect on small employers the Department itself acknowledges. A finding of significant impact triggers an analytical obligation; the DOL’s conclusory acknowledgment here does not satisfy it.

#### **A. The Cost-and-Transfer Figures Confirm the Scale of the Intervention**

The Department’s analysis projects that the rule would transfer substantial sums from employers to workers. Over ten years, at a seven percent discount rate, the Department estimates total transfer payments with an upper bound of \$46.09 billion. 91 Fed. Reg. at 15480. We note the figure is a transfer, the wages redirected from employers to workers, rather than a social cost; the Department separately estimates costs in the tens of millions. The size of the transfer is itself the point. A redistribution of this magnitude, justified by a skill rationale the data cannot support, is precisely the kind of economic intervention that demands a rigorous distributional analysis, and precisely the analysis the rule omits.

#### **B. The Rule Predictably Drives Work Offshore**

When the cost of sponsoring skilled workers in the United States rises, employers do not simply absorb the cost; a measurable share of the work moves abroad. The peer-reviewed evidence is directly on point. Studying firm responses to H-1B restrictions, Britta Glennon found that firms respond by expanding employment at their foreign affiliates, on the order of 0.4 additional employees hired abroad per visa rejection on average, rising to roughly 0.9 for the most globalized multinationals. Britta Glennon, *How Do Restrictions on High-Skilled Immigration Affect Offshoring? Evidence from the H-1B Program*, 70 *Management Science* 907 (2024), <https://doi.org/10.1287/mnsc.2023.4708> (also available as NBER Working Paper No. 27538, <https://www.nber.org/papers/w27538>). A rule that raises the cost of domestic sponsorship without addressing the underlying data defect predictably exports a portion of the very innovation activity the program is meant to keep onshore. The Department does not model this effect.

### **C. The Rule Entrenches Large Employers and Disadvantages Smaller, Startup, and Lower-Margin Innovators**

Because the rule keys selection pressure and wage obligation to base salary, it advantages employers able to pay at the upper end of the distribution and disadvantages those that compete for talent through equity, mission, or research opportunity rather than cash compensation. Startups and early-stage firms in fields such as biotechnology, artificial intelligence, and advanced energy frequently attract highly skilled workers who accept lower base pay in exchange for equity or incentive performance bonuses, or the chance to work on frontier problems. Nonprofit and academic research employers operate under budget constraints that hold base salaries below private-sector levels for equally or more demanding work. A methodology that treats base salary as a proxy for value systematically penalizes these employers and the workers they employ, redirecting access toward the largest and best-capitalized firms. The Department's analysis does not address this distributional consequence, which its own small-entity findings make foreseeable.

### **IV. Occupational Granularity Is Becoming More Necessary, While OEWS Is Structurally Outdated**

The rule moves in the wrong direction at the wrong time. As occupations fragment and evolve more rapidly, a coarse four-band percentile system becomes less defensible, not more. And the data the system relies on is structurally slow to reflect change.

The pace of occupational change is observable. In the technology sector, the labor market's revealed weighting of experience shifted markedly within a three-year window: postings seeking five or more years of experience rose from 37 percent to 42 percent of technology postings between the second quarter of 2022 and the second quarter of 2025, while postings for standard or junior roles fell sharply over the same period. Cory Stahle, Indeed Hiring Lab, Experience Requirements Have Tightened Amid the Tech Hiring Freeze (July 30, 2025), <https://www.hiringlab.org/2025/07/30/experience-requirements-have-tightened-amid-the-tech-hiring-freeze/>. Any wage methodology anchored to a point-in-time observation of the labor market will be out of step with that market by the time a worker sponsored under it reaches mid-career.

OEWS is poorly suited to track such changes because it is structurally outdated. It is built on a multi-year rolling reference period; its estimates are constructed from six semiannual panels collected over a three-year period, with each establishment surveyed at most once every three years, and the data are published annually on a single May reference date. Even the most current OEWS release reflects conditions that have already partly passed. See BLS, Occupational Employment and Wage Statistics: Overview, [https://www.bls.gov/oes/oes\\_emp.htm](https://www.bls.gov/oes/oes_emp.htm). A rule that anchors high-stakes wage floors to a slow-moving data series imports that lag into every determination it governs.

The Department has, in the past, maintained an instrument that captured what OEWS does not. The Dictionary of Occupational Titles, last revised in 1991, classified more than 12,700 occupations using a nine-digit code that rated each job's relationship to Data, People, and Things, and that recorded each occupation's Specific Vocational Preparation, on a scale from a short demonstration to more than ten years of training, together with its General Educational Development requirements. That instrument encoded, at the level of the job itself, the education-and-experience structure that OEWS omits. The Department did not abandon the Dictionary because the concept was unsound; it moved toward a survey-based successor (O\*NET). The 1991 Dictionary of Occupational Titles is publicly available at <https://occupationalinfo.org/> and through the DOL Office of Administrative Law Judges library at <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDOT>. With modern data tools, a granular, occupation-level framework, developed through a public-private partnership, would serve the statutory mandate far better than percentile guesswork applied to data that cannot see skill. We raise this as the constructive alternative the record should reflect; we do not ask the Department to resolve its design in this rulemaking.

## **V. The Rule Risks Recreating the Cross-Occupation Wage Cascade Congress Repealed in 1991**

The statutory history is directly adverse to the rule's design. As originally enacted, the Immigration Act of 1990 required an H-1B employer to pay the prevailing wage to the visa holder "*and to other individuals employed in the occupational classification and in the area of employment.*" Pub. L. No. 101-649, 104 Stat. 4978, 5021 (1990). Read literally, that language extended the wage obligation across an entire occupational classification and area, reaching United States workers who had no connection to any H-1B hire.

Congress moved within a year to undo it. The Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA) struck the phrase requiring payment of the prevailing or actual wage "*to other individuals employed in the occupational classification and in the area of employment*" and eliminated this broad wage-escalation provision so that the statute now only is concerned with whether the wage paid to the H-1B worker is comparable to that paid "*to all other individuals with similar experience and qualifications for the specific employment in question.*" Pub. L. No. 102-232, § 303(a)(7)(B), 105 Stat. 1733, 1746-1747 (1991). Congress thus deliberately narrowed the beneficiary of the H-1B required wage (the higher of the prevailing or actual wage) to the H-1B worker and eliminated any obligation to enhance the wages paid to similarly experienced and qualified workers at the same employer's facility. The change was thus substantive, and not a drafting cleanup.

The proposed rule risks recreating, through regulatory design, the very effect Congress repealed. By inflating the prevailing wage that employers must pay sponsored workers, the proposed rule, if finalized, would pressure employers to raise wages for similarly situated United States workers in the same roles, or face the appearance that they favor noncitizens, reaching across the workforce

in a manner that approximates the cross-occupation obligation Congress eliminated in 1991. That a regulation reaches the result indirectly does not distinguish it from the statutory provision Congress struck. See A. Paparelli & S. Yale-Loehr, “A proposal to change foreign workers’ wages could threaten American jobs,” *The Hill* (May 20, 2026), accessible at: <https://thehill.com/opinion/congress-blog/labor/5885484-proposed-wage-increase-h1b/>.

Moreover, under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Department’s interpretation receives no deference; a reviewing court will exercise the independent judgment of the federal courts to determine the best, legally-compliant reading of the statute. A methodology that revives a cross-occupation wage effect Congress deliberately removed, and that the Department builds on data it concedes cannot measure the skill the rule claims to capture, is not the best, or a convincing, reading of the statutory mandate; simply stated, the NPRM does not carry with it the power to persuade. The Department’s preamble in the NPRM invokes its discretion to give meaning to statutory terms but does not engage with the 1991 MTINA narrowing at all. See 91 Fed. Reg. at 15461 (discussing statutory authority and invoking *Loper Bright* discretion without addressing the MTINA amendment). That silence is itself a defect. Simply stated, the Department has not explained why a wage-escalator that Congress rejected for the actual-wage prong should be reintroduced, in substance, through the prevailing-wage methodology.

The wage cascade is not a hypothetical concern. The enforcing agencies treat differential treatment of United States and sponsored workers as a live source of liability. On February 19, 2025, the Acting Chair of the Equal Employment Opportunity Commission stated that unlawful bias against American workers “*is a large-scale problem in multiple industries nationwide*” and identified, among the practices the Commission would scrutinize, employers’ *exploiting rules around certain visa-holder wage requirements*. Press Release, U.S. Equal Emp. Opportunity Comm’n, EEOC Acting Chair Vows to Protect American Workers from Anti-American Bias (Feb. 19, 2025), <https://www.eeoc.gov/newsroom/eeoc-acting-chair-vows-protect-american-workers-anti-american-bias>. A rule that widens the gap between the mandated wage for sponsored workers and the market wage for their domestic peers enlarges precisely the exposure the Commission has signaled it will pursue.

## **VI. The Rule Suffers from Independent Defects Under the Administrative Procedure Act**

Each of the following is an independent ground on which the rule, if finalized in its current form, would be vulnerable. We raise each so that it is preserved in the administrative record and so that the Department may address it individually.

**A. Unexplained line-drawing.** The rule selects specific percentile thresholds, the 34th, 52nd, 70th, and 88th, but does not explain why those particular percentiles correspond to the four skill levels they purport to represent, given that the underlying data carry no skill signal. An agency must articulate a satisfactory explanation for its action, including a rational connection between

the facts found and the choice made. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The rule does not connect the chosen percentiles to any measured skill difference, because the data contain none.

**B. Failure to consider reliance interests.** Employers, sponsored workers, and educational institutions have structured recruitment, compensation, and filing practices around the existing wage framework. The rule does not adequately consider these settled expectations or the disruption that a methodology change of this magnitude imposes on parties who reasonably relied on the current structure. See *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020) (longstanding policies may have engendered serious reliance interests that must be taken into account).

**C. Failure to treat alternative wage sources on equal footing.** Existing regulations permit employers, in defined circumstances, to rely on an alternative wage survey, and require in others the use of wages set by collective bargaining agreements or by statutes such as the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act. See 20 CFR 656.40(g) (employer-provided and alternative wage surveys in the PERM program); 20 CFR 655.731(a)(2), (b)(3) (prevailing wage sources, including independent authoritative and other legitimate wage surveys, and required documentation under the LCA program); 20 CFR 656.40(b)(1), (b)(4) (wages set by collective bargaining agreements and statutory wage determinations under the Davis-Bacon Act and the McNamara-O'Hara Service Contract Act, respectively). These sources reflect how a wage was actually determined, including the education, experience, and duties of the position. A methodology that collapses every wage onto an OEWS percentile, without regard to how the wage was set, relegates these legitimate alternative sources to a subordinate status the statute and existing regulations do not support.

**D. Inadequate engagement with the existing enforcement architecture.** The harm the preamble identifies, the preference for sponsored workers over United States workers, is already addressed by active federal enforcement programs spanning the Department's own Wage and Hour Division, the Department of Justice's Immigrant and Employee Rights Section, the Department of Homeland Security's component, U.S. Citizenship and Immigration Services' Fraud Detection and National Security directorate, and the Equal Employment Opportunity Commission. The rule does not explain why a methodology-level wage intervention is necessary in addition to these programs, or what marginal benefit it provides beyond the enforcement tools already in operation. The result is duplicative burden without a demonstrated incremental justification.

**E. Major-questions concerns.** A change of this economic significance to high-skilled immigration wage policy, which the Department itself designates as economically significant, warrants clear statutory authorization rather than reliance on general grants of discretion. See *West Virginia v. EPA*, 597 U.S. 697 (2022). We preserve this concern for the record.

## VII. Conclusion and Requested Action

The proposed rule would raise wage obligations across the H-1B, H-1B1, E-3, and PERM programs on a skill-proxy rationale that the Department's own data cannot support and that the DOL's own proposed experience-augmented alternative implicitly concedes the base data cannot supply. The rule revives, in substance, a cross-occupation wage effect Congress deliberately repealed, anchors high-stakes determinations to a structurally lagged data series, and omits the distributional and economic analysis its scale demands.

We respectfully request that the Department:

1. Withdraw the proposed rule.
2. In the alternative, substantially delay implementation pending the development of an adequate, granular data foundation capable of supporting wage leveling, and provide ample lead time before any registration, cap, or labor-certification cycle the rule would affect.
3. At a minimum, respond individually in any final rule to each of the numbered objections set out above, and develop a complete economic analysis that models distributional effects by industry and firm size, addresses the offshoring response, and presents and assesses feasible alternatives as the Regulatory Flexibility Act requires.

We appreciate the Department's consideration of these comments.

Respectfully submitted,

Kevin J. Andrews and Angelo A. Paparelli