

Comments by the National Small Business Association Re: Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions

The National Small Business Association (NSBA) thanks the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) for the opportunity to respond to this notice of proposed rulemaking entitled “Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions.” NSBA is the nation’s oldest small business advocacy organization representing the 70 million owners and employees that make up American small business, championing efforts that foster the growth, strength, and impact of small businesses.

While we welcome reforming the H-1B lottery system to better promote merit, NSBA recommends against using Department of Labor (DOL) “Wage Levels” as the basis for such reform.

In the proposed rule, USCIS discusses its aim of incentivizing employers to offer higher wages.¹ Unfortunately, the Wage Level system does not advance this aim. Instead of incentivizing employers to offer higher wages, using the Wage Level system would risk shutting out small businesses from contention in the H-1B process altogether, as small businesses in the U.S. are overwhelmingly reliant on Wage Levels I and II.² As such, weighting on Wage Levels would significantly reduce opportunities and restrict the H-1B talent pool for small businesses.

Moreover, recent data on small businesses that pay wages reflecting Levels I and II suggests that the Wage Level system does not paint a full picture. For example, for companies with under 500 employees, the 75th percentile of Level II wages offered to H-1B employees averages an annual salary of \$99,840, a higher compensation than one might expect for an H-1B employee at a “lower” Wage Level.³ If the USCIS’s goal is to reform the H-1B system to reflect merit, it should reexamine the question of whether DOL’s Wage Levels adequately capture the factors that influence wages across a broad spectrum of employer sizes.

Finally, another unintended consequence of the proposed rule is that early-career H-1B workers would be classified at the lowest Wage Levels, thus diminishing their opportunities for robust participation in the U.S. workforce and limiting the pool of talent that new early-career H-1B workers have to offer businesses both large and small.⁴ The proposed rule would therefore

¹ U.S. Citizenship and Immigration Services, Department of Homeland Security, Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions, Proposed Rule, 90 Fed. Reg. 45986 (proposed Sept. 24, 2025) (to be codified at 8 C.F.R. pt. 214).

² Jeremy Neufeld, “The “Wage Level” Mirage: How DHS’s H-1B Proposal Could Help Outsourcers and Hurt US-Trained Talent,” Institute for Progress, IFP.org, Sept. 24, 2025, <https://ifp.org/the-wage-level-mirage/>.

³ U.S. Department of Labor Employment and Training Administration, “Foreign Labor Certification: Performance Data,” DOL.gov, accessed Oct. 20, 2025, <https://www.dol.gov/agencies/eta/foreign-labor/performance>.

⁴ Jeremy Neufeld, “The “Wage Level” Mirage: How DHS’s H-1B Proposal Could Help Outsourcers and Hurt US-Trained Talent,” Institute for Progress, IFP.org, Sept. 24, 2025, <https://ifp.org/the-wage-level-mirage/>.

undermine the laudable and ambitious goals set forth by the Trump Administration's own workforce development strategy, which seeks to "deliver the talent businesses need to power the nation's economic resurgence."⁵

In short, we urge USCIS to reconsider its means of reforming the H-1B system to spur workforce excellence and support small businesses in recruiting top-level talent. NSBA stands ready to assist USCIS to meet these objectives.

Thank you again for the opportunity to comment on this request. Please do not hesitate to reach out to rgrey@nsbaadvocate.org if you have any questions.

Sincerely,

Rachel C. Grey
Director of Research & Regulatory Policy, NSBA

⁵ U.S. Department of Labor, U.S. Department of Commerce, and U.S. Department of Education, "America's Talent Strategy: Building the Workforce for the Golden Age," DOL.gov, Aug. 12, 2025, <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2025/08/Americas-Talent-Strategy-Building-the-Workforce-for-the-Golden-Age.pdf>.