January 12, 2026

Hon. Jeffrey Clark
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Re: Improving Wage Protections for H-1B and PERM Employment in the United States (RIN: 1205-AC30)

Dear Administrator Clark:

The Institute for Progress respectfully submits this letter regarding the Department of Labor's methodology for establishing prevailing wage levels under the Immigration and Nationality Act.

We write to highlight a fundamental flaw in setting prevailing wage levels that threatens the integrity of employment-based visa programs, including the H-1B. Specifically, Wage Levels set by the Department of Labor's Office of Foreign Labor Certification are not based on underlying data with any information on the education and experience levels of workers.

Even if the current, four-tiered prevailing wage thresholds were raised, then the prevailing wage system would still fail to stop employers from hiring foreign workers at lower pay than US workers with similar levels of experience and education. As we will show, even if the levels were raised so that every H-1B worker must be paid above the occupational median, many foreign workers would still be underpaid; *15 percent of H-1Bs paid above the occupational median are still underpaid relative to US workers in the same area with the same level of experience and education*. Shifting wage levels does not and cannot end wage arbitrage; it simply changes how *much* wage arbitrage continues to take place at different points within the wage distribution.

Fortunately, the U.S. government has administrative data that would allow DOL, for the first time, to establish prevailing wages based on actual data on workers' education and experience. This would allow DOL to significantly improve wage protections for H-1B and PERM employment in the United States and end the ability of US immigration programs to be used for wage arbitrage.

Background

Federal law requires employers to pay foreign workers at least the actual wages they pay other similar US workers and at least the prevailing wages for their occupation and location. This safeguard is designed to ensure that immigration does not undercut compensation for American workers. But DOL's current methodology cannot satisfactorily fulfill this statutory purpose because the data underlying prevailing wages contain no information about how wages vary with experience or education within occupations, despite the statute's instruction that when DOL provides prevailing wage levels, such wage levels "shall" be commensurate with experience and education.

Lacking such evidence, DOL has been forced to assume that every occupation exhibits an identical distribution of skills across its workforce to justify setting uniform percentile cutoffs across the wage distribution: Level I (“entry-level”) at the 17th percentile, Level II (“qualified”) at the 34th percentile, Level III (“experienced”) at the 50th percentile, and Level IV (“fully competent”) at the 67th percentile. Historically, proposals to change the prevailing wage system would change the particular percentile thresholds, but have retained the uniform application of the same percentiles to different occupations.

DOL has never produced evidence validating the assumption of a common skills distribution across occupations, nor could it, given that the Occupational Employment Statistics survey on which prevailing wage determinations rely collects no information about the variation in education or experience within occupational categories. This assumption has no empirical basis and, as we demonstrate below, produces results that systematically fail to protect US workers.

Opportunity

OIRA should encourage DOL to advance an alternative methodology for setting prevailing wage levels that accounts for experience and education in the underlying data. Such a reform would better comply with Congress’ directive to the Department to protect American workers by setting prevailing wage levels truly commensurate with experience and education.

Simply adjusting percentile cutoffs is not a solution. Any uniform threshold applied equally across all occupations will necessarily fit some poorly. Rather, DOL should develop occupation-specific wage level determinations based on actual data about how compensation varies with education and experience within each occupation.

This is now technically feasible. By linking 1040 administrative data (which contains occupation, earnings, and geography, and with longitudinal linkages which can generate experience data) with Longitudinal Employer-Household Dynamics data (which include geography, earnings, and education data), statistical agencies can generate high-quality tabulations of wages by occupation, area, experience, and education. These tabulations would allow DOL to anchor wage levels in the actual pay structure of each occupation rather than in arbitrary percentiles.

Such an approach would advance the goals of the Foundations for Evidence-Based Policymaking Act of 2018 by repurposing existing administrative data to improve program integrity. It would also better fulfill the Immigration and Nationality Act's requirement that prevailing wages be "commensurate with experience and education," a statutory mandate that any system of uniform thresholds cannot adequately satisfy in an evidence-based way.

Uniform percentiles systematically fail to protect US workers

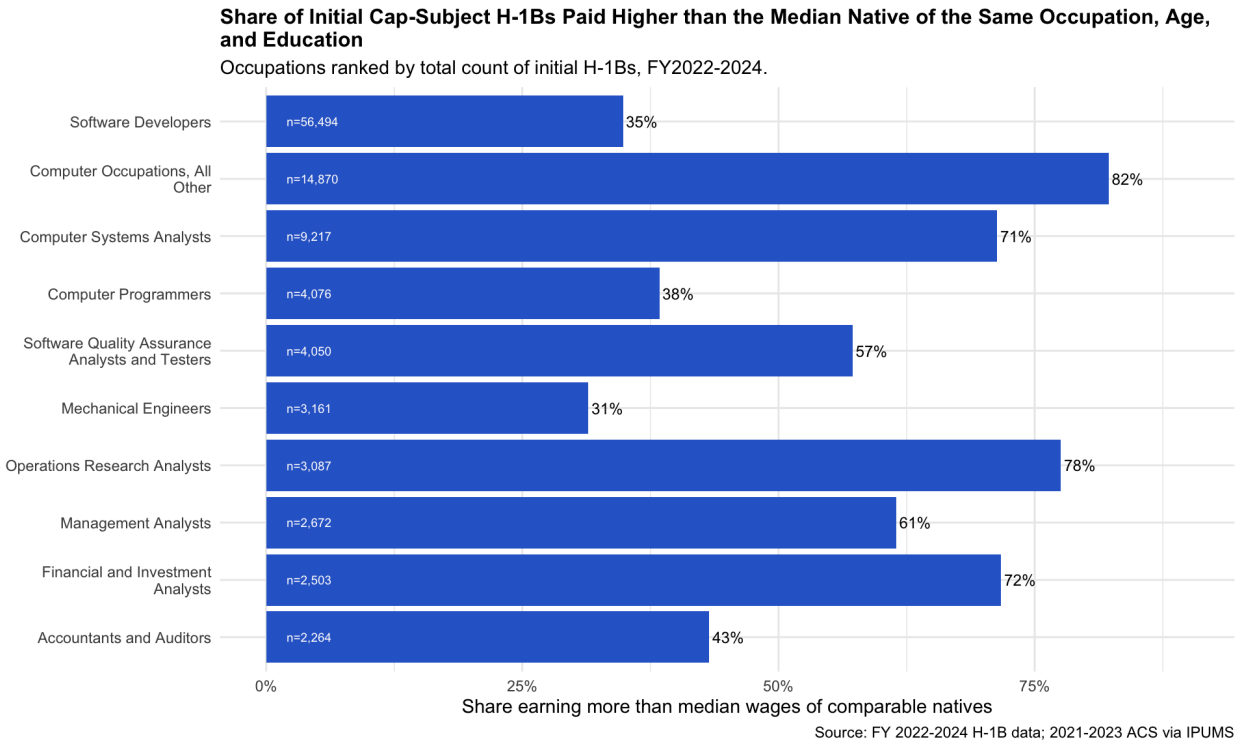
Different occupations exhibit markedly different workforce compositions. In junior-heavy occupations, entry-level staff far outnumber senior positions. In senior-heavy occupations, experienced practitioners dominate, and entry-level workers are scarce. Applying identical percentile thresholds to both types of occupations produces internally inconsistent results. If

thresholds are calibrated to senior-heavy occupations, employers in junior-heavy fields can use the immigration system for wage arbitrage, potentially undercutting U.S. workers while still passing labor certification requirements. Conversely, if thresholds are calibrated to junior-heavy occupations, the prevailing wage methodology will be ill-equipped to apply to senior-heavy fields.

To reveal the consequences of this methodological weakness, we analyzed H-1B lottery data obtained through FOIA, comparing H-1B workers against the native-born workforce through American Community Survey microdata. When H-1B workers are compared to similarly employed native-born workers, the results vary dramatically by context.

Using cleaned FOIA data obtained by Bloomberg on H-1B lottery winners, we compare the pay of new H-1B lottery winners to native-born workers with the same occupation, age (a proxy for experience), and level of education, as reported in the American Community Survey.

In some segments of the H-1B system, sponsored workers earn a substantial premium over native workers with the same age (which we use as a proxy for experience), occupation, and education, suggesting firms are using the visa to sponsor valuable talent with scarce skills, rather than to save on labor costs. In other areas, the premium is negative, indicating the Department of Labor's prevailing wage methodology is failing to protect US workers. The following chart shows what share of new H-1Bs in the top H-1B occupations earn more than median wage paid to natives of similar age and education in the same occupations.



As the chart demonstrates, in every occupation, some new H-1Bs are paid less than similar natives with similar ages (a proxy for experience) and education. However, the degree to which

the prevailing wage system fails to ensure parity in pay varies widely by occupation. Among some occupations, most new H-1Bs are paid more than similar natives. Among other occupations, including Software Developers, the top H-1B occupation, most new H-1Bs are paid less than similar natives. This demonstrates that the uniform percentile cutoffs are better calibrated for some occupations than others. If the prevailing wage system were based on data with characteristics like experience and education, use of employment-based visas that rely on it for wage arbitrage could be radically reduced, if not eliminated entirely.

Simply raising the cutoffs will not be sufficient to account for how wage premiums vary by occupation and by experience. An employee on a work visa may be paid in the lower half of the wage distribution for their particular occupation and labor market for different reasons. One reason may be pure wage arbitrage. Employers may be able to undercut American workers with cheaper, foreign workers.

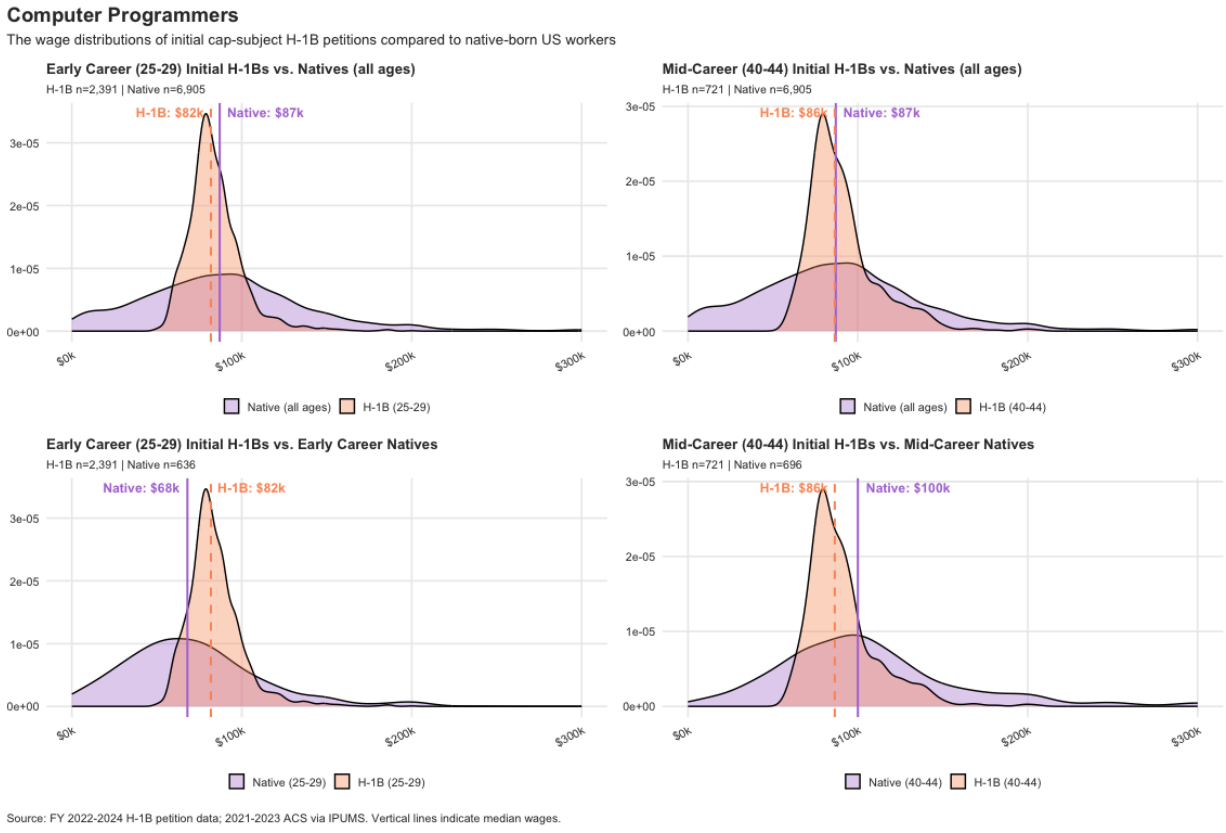
But foreign workers may be lower on their particular occupational wage distribution simply because they have less experience. A talented, early-career surgeon, for example, may make less than the median surgeon overall, even if she makes far more than her early-career peers. Meanwhile, a mid-career worker at an IT outsourcing firm may earn more than the median computer systems analyst while at the same time making far less than his peers with similar qualifications and experience.

In these demonstrative examples, raising the four prevailing wage levels would fail to eliminate wage arbitrage use case. 15 percent of H-1Bs paid above the occupational median are still underpaid relative to US workers in the same area with the same level of experience and education. At best, raising the cutoffs may reduce wage arbitrage while shifting wage arbitrage that remains to other parts of the salary distribution. This failure risks excluding the most promising early career workers while simultaneously failing to protect American workers from low-wage competition.

Let's consider a concrete example of how the four-tiered prevailing wage system falls short: computer programmers. The chart below compares the earnings of beneficiaries of initial cap-subject H-1B workers from FY2022-2024 with different levels of experience against the earnings of natives in the corresponding years. H-1Bs are in orange, the natives are in purple.

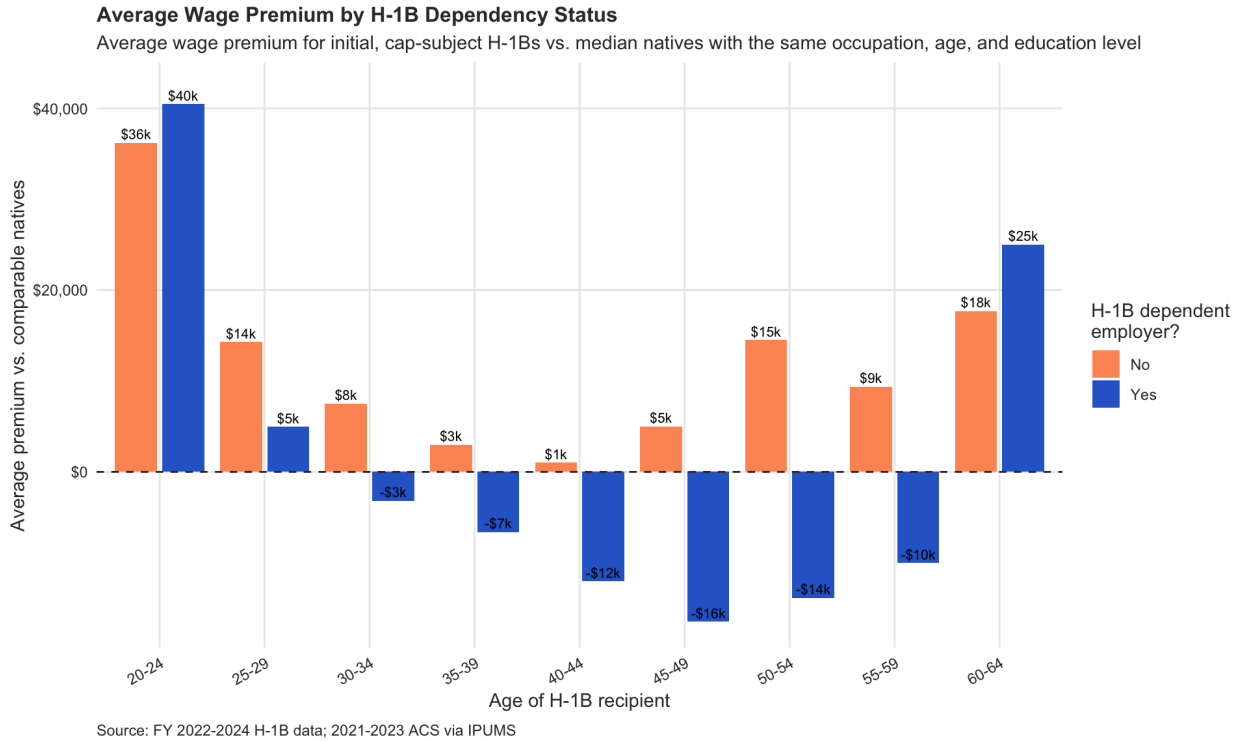
Starting in the upper left quadrant, we compare early career (age 25-29) H-1Bs against all natives (at any level of experience). The median early-career H-1B computer programmer earned about $5,000 less than the median computer programmer overall. This is not surprising given that they lack experience. Looking at the lower left quadrant, we compare early-career H-1Bs against other early-career natives. Compared to computer programmers of similar experience, most early-career H-1Bs are paid more than the median native. Yet if Level I had instead been raised to the 50th percentile, then *most* early-career H-1B computer programmers would not have met the prevailing wage requirement, even though most are paid *more* than natives of similar experience.

Looking at the upper right quadrant, we compare mid-career (age 40-44) H-1Bs against all natives (at any level of experience). Here, the median pay is almost the same between the two groups. However, looking at the lower right, the median mid-career H-1B worker gets paid $14,000 *less* than the median mid-career native, with 77% of mid-career H-1Bs being paid less than *comparable* natives. **But by simply raising the thresholds, DOL would fail to identify all of these underpaid workers.**



Source: FY 2022-2024 H-1B petition data; 2021-2023 ACS via IPUMS. Vertical lines indicate median wages.

The following chart shows the wage premium across different ages (a proxy for experience), demonstrating that older workers are more likely to exhibit a negative wage premium, while the youngest workers have the highest wage premium. At ages 45 and above, the wage premium continues to fall with age for H-1B dependent employers while it rises again for non-dependent employers. In other words, simply raising the cutoffs is ill-targeted toward the parts of the H-1B system where underpayment relative to natives is most prevalent: among H-1B dependent companies sponsoring mid-career workers.



Simply raising the percentiles will disproportionately exclude high-potential workers who earn less merely because they are young and early in their careers, while failing to properly exclude negative-premium workers who pose a real threat to U.S. wages but who earn more merely because they are older and later in their careers. No single percentile threshold, however high, can simultaneously protect against undercutting in junior-heavy occupations while permitting legitimate entry-level hiring in senior-heavy ones.

Conclusion

We urge OIRA to work with DOL to generate high-quality tabulations of wages for occupation, area, and experience on which DOL can make more evidence-based prevailing wage determinations. We provide more information about how this can be accomplished in the attached proposal. We also stand ready to work with OIRA and the Department to accomplish this.

Any regulatory action that perpetuates the current uniform-percentile approach should be returned to DOL with instructions to develop an evidence-based alternative or, at a minimum, to

provide empirical justification for the assumption that all occupations share identical skill distributions.

The integrity of employment-based immigration programs, and the protection of U.S. workers that these programs are designed to ensure, depends on prevailing wage determinations that reflect labor market reality rather than administrative convenience.

We appreciate your attention to this matter and welcome the opportunity to discuss these issues further.

Sincerely,

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