



Migration that Works

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Office of Foreign Labor Certification
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Department of Labor, Box 12-200
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Comment on RIN 1205-AC00 – Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States

Dear Mr. Pasternak:

As unions, workers' organizations and advocates representing millions of working people—including many who work in this country on nonimmigrant visas—Migration that Works¹ and the undersigned advance policies that promote equal rights and high standards for all workers, regardless of immigration status.

We believe that our immigration system should serve people, not profits. We categorically oppose low road immigration policies that serve corporate interests by allowing differential treatment of migrant workers as a source of cheap labor. All workers deserve to be treated with dignity and to earn fair, family sustaining wages.

This rule makes important strides to bring wage requirements for the H-1B program closer to real prevailing wages in relevant industries. However, we believe modifications are needed to prevent harm to the existing H-1B workforce and prevent misclassification of workers. We also urge the administration to insist on similar high standards for workers of all skill levels and all work visa categories.

The primary purpose of the IFR is to “update the computation of prevailing wage levels under the existing four-tier wage structure to better reflect the actual wages earned by U.S. workers similarly employed to foreign workers.”

	<u>Previous wage structure</u>	<u>New wage structure</u>
Level 1	17%	45%
Level 2	34%	62%
Level 3	50%	78%
Level 4	67%	95%

¹ Migration that Works is the first coordinated effort to strategically address abuses in international labor recruitment across visa categories.

We welcome these improvements to the wage structure. The median wage for an occupation in a local area is reflective of the minimum market rate that should be paid to an H-1B worker in order to safeguard U.S. wage standards and ensure that migrant workers in H-1B status are compensated fairly. By setting two of the four wage levels below the median, DOL had failed to require that firms pay market wages to H-1B workers. In 2019, three fifths of H-1B visas were certified at these lower two levels.

Many of the tech employers who push to expand and deregulate the H-1B program have a documented record of colluding to suppress wages, and many of the top H-1B users have actively replaced U.S. tech workers with lower paid H-1B workers who lack the same basic workplace rights. Tech moguls have gotten rich while wages in the technology sector have stagnated. Changing program rules to require and enforce wages at or above the median will prevent further misuse of the program as a tool to suppress wages and increase profits.

The virulent employer opposition to normalizing H-1B wage levels repeats familiar, tired arguments against any effort to lift wages, whether it is increasing the minimum wage or strengthening overtime regulations—namely that such efforts will harm the economy and harm the very workers they intend to help. Empirical evidence demonstrates otherwise. Lifting wage rates is expansionary policy that reaps broad economic benefits. Opponents of the rule also seek to portray the elevation of labor standards as a barrier to migration, raising the dangerous suggestion that migrant workers can only gain access to our labor market if we allow them to be underpaid. This is a false and unacceptable premise on which to build labor migration policy.

DOL should phase in the new wage requirements in a way that does not harm the current H-1B workforce. Hundreds of thousands of current H-1B workers entered the country under one set of rules and expectations. Unless carefully implemented, an abrupt change to the terms for approval of their temporary or permanent visas could put these workers in an even more precarious position. Elevating the wage requirements for workers who are already employed may cause churn if employers unwilling to pay real market wages decline to renew their workers' H-1B visas or initiate petitions for permanence. DOL must prevent such potential harm to the very workers the rule should seek to protect. Rather than requiring changes to terms of ongoing employment, DOL should focus initial implementation of the rule on new H-1B petitions and work with DHS to create positive incentives for employers who match the new wage requirements for their existing workforce.

Concerns over what this rule will mean for H-1B workers seeking permanence only underscore why that process should be reoriented and taken out of the hands of employers. H-1B workers should be able to self-petition for permanence and not forced to rely on employer support. In addition, the timing for a labor market test should be shifted to the point of initial H-1B hire, rather than many years into employment when it serves as a barrier to job security and legal permanent residence.

DOL should implement measures to address misclassification. While the rule makes great strides in correcting the wage rates that should be offered to H-1B workers, it does nothing to prevent employers from offering highly trained and experienced workers level 1 wages. The H-1B application and petition process should be updated so that DOL reviews the qualifications of individual workers before DHS petitions are approved to ensure that wage levels match up with age, education, and experience. USCIS currently performs this role, but adjudicators lack expertise in wage and hour issues, which is why the functions should be undertaken by the proper agency.

The administration should insist on similar high standards for other work visa categories. We note with alarm the contrast between the steps the administration has taken to lift wages within the H-1B program while gutting wage protections for H-2A workers who are clearly essential amidst the pandemic. We categorically reject such disparate treatment and demand measures to ensure fair wages and treatment for farmworkers and all workers, particularly those whose labor supports our critical infrastructure.

We appreciate your consideration of our recommendations to strengthen this rule and promote broader policy coherence for protecting worker rights and labor standards across all work visa programs. We will continue to push for immigration policy reforms that help to lift all boats and create a level playing field—rather than one that’s used to degrade wages and working conditions—for migrant and U.S. workers alike. We would be happy to discuss our recommendation further. Please contact Sulma Guzman, Policy Director and Legislative Counsel at Centro de los Derechos del Migrante (sulma@cdmigrante.org).

Sincerely,

Migration that Works

Members

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